OUR GOVERNMENT

HOW IT GREW, WHAT IT DOES, AND HOW IT DOES IT

BY

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PREFACE.

A CHILD who has been well instructed in Geography knows already something about a school district and other local governments around him; he has some knowledge of the state and of the United States. This book is designed to extend the knowledge of all these institutions and teach something of their relations to each other.

The governmental institutions of our entire system are so related that no one of them can be thoroughly understood without a knowledge of all. The institutions directly affecting the citizen in his ordinary civil relations are chiefly those of the state and the local governments within it. Many useful lessons in civil government may be learned from the state alone; yet the action of the state is in some cases conditioned upon the action of the general government. On the other hand, to limit instruction in civil government to the Constitution of the United States presents more serious difficulties. The Constitution assumes the existence of the states and provides for a supplementary government. It cannot be rightly understood without a knowledge of the states. To attempt to teach the Federal Constitution without this knowledge results naturally in the teaching of error.

The order of topics here presented is such that the institutions nearest, and naturally most familiar, shall receive special attention first. In this part of the work a direct study of the actual institutions of the locality is intended. The different states and different parts of the same state furnish a variety of agencies. It is from the direct observation and study of actual governmental institutions that a real knowledge is derived. Books are useful as they stimulate and guide observation and assist in interpretation.

When the manuscript for the first edition was sent to the publishers, it was with the expectation that copies would be printed for trial in the class-room before publication. I have now, in accordance with my original plan, rewritten the book, and made such changes as experience seems to demand. From the publication of the book and its use in the schools of the various states I have derived the benefit of a much wider range of criticism than could have been secured from a trial edition. In the meantime several books have appeared which have been found helpful in preparing the new edition. The most important of these are Bryce's The American Commonwealth, and Howard's Local Constitutional History of the United States.

J. MACY.

GRINNELL, IOWA,
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PART I.

ORIGIN OF OUR GOVERNMENTAL INSTITUTIONS.



CHAPTER I.

OUR EUROPEAN ANCESTORS.

Governmental Institutions. — The American citizen lives under not less than five institutions called governments. He is a member of a school district. He belongs to a civil township. He may be subject to a town or a city government.[1] He is a part of a county government; and he is ruled over by a state and a federal government. Each of these governments performs separate, special work, for the good of the people, and all are more or less closely connected one with another. The state and the federal government each exercises important and independent powers; but the school district, the town, the township, and the county are chiefly important as agents of the state; they exercise only such powers as are permitted by the state legislature.

Origin of the Township. — Of the various governmental institutions under which we live, the oldest is the Township. Before our German ancestors invaded

[1] In New England the word *town* is used in the sense of *township*. In many states a citizen may at the same time be subject to both a township and a town or city government.

England, in A.D. 449, they lived on the continent of Europe, in Denmark and the neighboring country to the south. Here the families of kinsfolk were accustomed to build their houses near together, on the banks of a river or near a spring. For purposes of defence, they would surround their houses with a rude fence or a hedge, which they called a *tun* (*toon*), whence we derive the name town; and the name *tun-scipe*, or township, was given to the village and the surrounding country.

Town-Meeting. — The villagers in the ancient townships of England were wont to meet in the open air and transact business of common interest. They adopted by-laws for the government of the township, new members were admitted, disputes between townsmen were settled, minor offences were punished, and lots of land were distributed to the various families for the year's tillage. At the town-meeting, also, town officers were chosen, such as the head-man, or reeve, and the tithing-man. "Four best men" also were chosen in later times to represent the township in the courts of the hundred and the county. Not only is the township the oldest of our governmental institutions, but, from the part which it has played both in England and in America, it may fairly be said to be the most important.

The Manor. — Many of these ancient townships were not free. A chief man, either because he was descended from the founder of the village, or because in times of violence he had gained control of the land, was looked upon as the lord of the township. There were centuries of violence after the coming of the English into England. They contended long and fiercely with the Britons for possession of the island. Then different tribes

of English fought with one another for supremacy. Later the Danes invaded England, and a Danish king conquered the country in 1016. Finally, in 1066, England was conquered by William of Normandy. Long before the end of this period of violence all the lands had become subject to lords; there were no longer free townships. The name given to a township when it was thought of as a lord's estate was Manor. Yet the manor did not entirely destroy the township; there were still meetings, or courts, which the villagers attended, and through which they had some share in the government.

Towns and Boroughs. — The word *borough*, like the word *town*, was derived from that which served as a protection for the dwellings. It signifies a place of strong defence. The early English townships, which were more strongly defended or became more populous than the ordinary township, were often called Boroughs. These at first differed from the ordinary township simply in strength. They came to be more highly organized; and when the ordinary townships were subjected to the power of a lord, the stronger towns and boroughs retained a much larger share of freedom. As the feudal lords fortified their dwellings in the country, and erected castles to increase their power, towns and cities increased their defences and built walls to preserve their liberties.

The Parish. — When the Saxons came into England they were heathen. In course of time, missionaries from Rome established the Christian religion. The church was organized on the Roman model of church government, and was supported by taxation. It then attended to many things now belonging to the civil government.

The church divided the country into parishes, having generally the same geographical boundaries as the township, though sometimes two townships made one parish. Gradually the term *parish* displaced, in most cases, the older term *township*. There are thus three names for the same area. Viewed as the territory of the original local government it is the Township; as the area of the lord's estate it is the Manor; as the area for the support of a church it is the Parish. Wherever the more highly organized borough, town, or city was established, it took the place of the township.

The Hundred. — In very early times, probably before the English came into England, groups of neighboring townships were united into a larger district called a Hundred. It is not known certainly how the name *hundred* came to be used. It is supposed that the original hundreds were composed of the neighboring townships which furnished a hundred warriors for the army. As we know the word, it means simply a governmental district larger than a township and smaller than a county. There was a Hundred Court, made up of the chief lords in the hundred, and the "four best men" and the reeve from each township and borough. The business of the court was chiefly judicial. Cases too difficult to be settled in town-meeting were carried to the hundred court. In course of time the hundred court absorbed most of the judicial business of the town-meeting. In later times, when the office of Justice of the Peace was fully developed, and the county and higher courts were established in England, the court of the hundred fell into disuse, and now the name is used to designate simply a district.

Kingdoms and Shires. — When the English began to conquer the Britons they were not subject to the rule of kings. In time of war a leader was chosen from among the chiefs, and when the war was over he ceased to be ruler. But when in England a state of war came to be the common condition, the leader of the army became a permanent officer, and received the name of King. The country over which he ruled was a Kingdom. Various tribes of the English conquered different parts of England and founded little kingdoms. The petty kings fought against each other for supremacy, and finally all were subjected to one king. The little kingdoms then became parts of a united kingdom, and were called Shires, from a word meaning a *share*, or part. New shires were formed by subdivision, and from conquests of new territory, until at length England and Wales were made up of fifty shires, or counties.

The County Court. — When the little kingdom became a shire, the government, which had been a king's government, became a shire government. The kings in England did not rule alone. Closely associated with them was a body of men called "The Wise." With these were often assembled in the petty kingdoms representative men from the hundreds and the townships. In the shire, instead of the king's court, there appeared a Shire Court, which was composed of the chief men from the hundreds, and four men and the reeve from each township in the shire. As the townsmen chose their own reeve in town-meeting, and the hundred court chose the hundred reeve, so in early times the shire court sometimes chose the shire reeve, or sheriff. But ordinarily the sheriff was selected by

the king. He was the chief officer of the shire, and usually presided over the county court. After the coming of the Normans, in 1066, the shire court underwent some changes, and its name was changed to County Court.

Business of the County Court. — It will be observed that a full county court was composed of a large number of persons. To it came the chief men from each hundred, and five men from each borough, and five from each little township. The court met twice each year, and in it were transacted various kinds of business. The cases at law which were too difficult to be settled by the hundred court, were carried to the county court. Besides judicial business, the court was made an agency of the king for the collection of taxes, the publication and the execution of laws.

Origin of Parliament. — After the coming of the Normans, that body of "wise men" who were always associated with the king in the government of England came to be called the King's Council. It was composed of all the great lords of the kingdom, and the bishops, who represented the church. In the earlier times, when the king and his council wished to secure funds to carry on the government, a message was sent to the sheriff of each county, who was directed to arrange with the members of the county court for the collection of the tax. Often the court, before agreeing to the king's tax, would insist upon the grant of some favor or privilege from the king. Later, instead of sending to the county court for the arrangement of the taxes, the king directed the sheriff of each county to have the court select two men to represent the shire in the king's

council, and it was usually added that two representatives be sent from certain boroughs and cities. The county members were lords of a lower rank than the other lords of the king's council; the borough members represented the tradespeople of the towns. At first they were all chosen in the county court, and they all sat with the older members of the king's council But during the reign of Edward III. (1327–1377), the lesser lords from the counties and the members from towns and cities formed a habit of meeting in a separate place, and the body was called the House of Commons. The older part of the council was then named the House of Lords, the bishops being the lords spiritual, and the others the lords temporal.

The Business of Parliament. — The kings of England could never act alone. It was by joint action of king and council that laws were made and policies were agreed upon. The chief object of the king in adding to his council members from counties and towns was to secure taxes. As the members of the county court were accustomed to ask favors of the king before agreeing to a measure of taxation, so did the representatives chosen in county court when they voted taxes for the king in Parliament. A petition presented by the elected members, when granted by the king and the lords, and signed by the king, became a law. The House of Commons from the first has been the source of all bills for raising revenue. It gradually gained a share in the making of laws and in directing the affairs of the government.

Supremacy of Parliament. — During the century in which colonies were founded in America, there was

a fierce contest between the king and the Parliament. The Stuart kings claimed the right by royal decree to set aside laws passed by Parliament. They also claimed the right to collect taxes without its sanction. In 1649 Charles I. was condemned to death by a special court created by act of Parliament. In 1688 James II. was driven out of England. The following year William III. was made king of England, and James and his heirs were excluded from the throne by act of Parliament. By these and other acts the Parliament has gained supremacy over the crown.

CHAPTER II.

ORIGIN OF LOCAL GOVERNMENTS.

Local Governments Transplanted. — When the English founded colonies in America there existed in England: 1. The township with its substitutes and modified forms, the manor, the parish, and the borough, town, or city. 2. The hundred, which had lost much of its former importance. 3. The county or shire, whose government had been taken out of the hands of the ancient representatives from townships and hundreds, and had been committed to justices of the peace, appointed by the king. The former representative county court had been replaced by a court composed of justices and juries which met four times a year, and was called the Court of Quarter Sessions. All these institutions and their names were transplanted to the New World.

Temporary Institutions. — Some of the local governments transplanted to America have been given up.

1. The Hundred. When Ferdinand Gorges made provision for the government of the colony to be planted in Maine, he speaks of dividing the country into eight counties, while each county was to be divided into sixteen hundreds. There is also allusion to the subdivision of hundreds into parishes. But the hundreds never appeared. In the charter given to William Penn, in 1681, "Free and absolute power" is granted, "To Divide the said Countrey and Islands into Townes, hundreds and Counties, and to erect and incorporate Townes into Borroughs, and Borroughs into cities." Here again there is no evidence that hundreds were organized. In Delaware, which for a time was a part of Pennsylvania, the name *hundred* is still used in the place of township, but it does not appear that it was ever applied there to any other institution. In Maryland there were for a time hundreds which bore a strong resemblance to the old English hundred. Three of the districts represented in the first legislature of Virginia were called hundreds. The name also appears in the Carolinas; but the institution everywhere disappeared. In Delaware the name alone survives, with a different meaning.

2. The Manor is mentioned in the early history of many of the colonies. For a time real manors, organized on the English model, flourished in Maryland and New York, but these have all disappeared.

3. Parish was the most common name for the township area, when the English came to America. The church was the most striking institution in the town-

ship. It required a large tax for its support, and constant care to protect its property. Wherever the Church of England was established in America, parish, or the church name for township, was the name given to the local government. In most cases, when the church became independent of the government, the word *parish* as a governmental name disappeared. In South Carolina, however, the name was used till the Civil War. We thus see that the hundred has entirely disappeared; with the departure of the lord from the township, the manor ceased to exist; when the church became independent the parish vanished. The township and county remain as local governments of permanent value and general jurisdiction, and we have the incorporated town and the city as special governments for dense populations. Upon these have been founded the states and the nation.

The New England Town. — In no other place has the township reached so perfect a development or filled so important a place in the scheme of government as in New England. By transportation to New England, new life seems to have been infused into the remnants of the ancient town-meeting which had been preserved in the towns, parishes, and manors of England. The New Englanders were at first left almost entirely to themselves. The passengers of the "Mayflower," before landing, drew up and signed a brief statement, which was to be their guide in founding a new state. In their chosen home, they acted much as their ancestors are believed to have acted two thousand years ago. They were surrounded by hostile Indians. They built their houses near together, and provided a com-

mon defence. Much of the land was held as common property. The holding of common pasture lands and common woodlands by New England towns has survived till recent times; and in many of them the hog-reeve is still an annually chosen officer. The towns at first possessed all the powers of government. They were neglected by the home authorities, and not restrained by any general government in the colony. The town of Plymouth executed one of its citizens for the crime of murder. The early towns were not set up by a central authority; they organized themselves. They were also self-propagating. Groups of families from the older towns would unite with immigrants from England, and build together a new town upon the unoccupied waste. When the central colonial governments began to provide for the founding of new towns, they followed the model of those already founded. The town was thus extended to every part of New England.

New England Churches. — The early settlers of New England were Congregationalists. They believed that, according to the New Testament, each body of believers so situated as to attend one place of worship should make one independent self-governing church. This fact had much to do with the life of the New England town. To build a church and provide for the support of a minister was one of the first acts of the new town. The size of the township was determined by the distance for convenient attendance upon church services. In many ways the life of the town centred in the church and the school, which was closely connected with it. At first a church-meeting was made up

of the same individuals as a town-meeting. In some of the colonies, only church members had a right to vote. Some of the New England towns continued until quite recent times to support the church by taxation.

The Town-Meeting. — In its form of government the New England town was a pure Democracy. All the townsmen met together in town-meeting to make laws for the township and provide ways and means for their execution. From the landing of the Pilgrims, in 1620, to the present day, the town-meeting has suffered little change. Church membership is no longer required to entitle one to vote and take part in the meeting; and taxes are not voted for the support of the church. But provision is there made for town schools, for the poor, for highways, for the health of the town, for the assessment and collection of taxes, and for a multitude of other local matters. The meeting is organized by choosing a presiding officer, called a Moderator. At the annual meeting the regular town officers are chosen. These have varied somewhat at different times and places, but the following are the principal town officers in the state of Massachusetts:

1. The Clerk, whose duty it is to attend the town-meeting and keep an accurate record of all the proceedings. He has the care of all the town records, and performs various other duties prescribed by the vote of the town-meeting or by the laws of the state.

2. Selectmen, from three to nine in number, who are the chief executive officers of the town. They carry into effect all measures adopted at town-meeting not otherwise provided for. They also call the town-

meeting to hold elections for state officers, and perform other duties prescribed by state law.

3. Assessors to make a list of the tax-payers and taxable property.

4. A Collector who receives the assessors' list and gathers the taxes.

5. A Treasurer who receives the money from the collector and pays it out as ordered by the selectmen.

6. A School Committee having charge of the town schools.

7. Overseers of the Poor to have charge of the town almshouse, and furnish aid to the poor.

8. Highway Surveyors to repair roads and bridges.

9. A Constable who is the chief administrative officer of the township.

Other officers chosen are field-drivers, fence-viewers, etc.

The New England County. — The general Colonial Government in Massachusetts consisted of a Governor, a Deputy Governor, Councillors or Assistants, and Representatives from the towns. This body of officers received the name of General Court. The Court was the general law-making body for the colony, and it at first attended to all the judicial and executive business not provided for in the towns. It answered all the practical need of a county government. The judicial business was attended to by the Governor and the Assistants, or Councillors. In the Massachusetts Bay Colony, as early as 1636, inferior courts were provided in four places, and in 1643 the colony was divided into four shires, or counties. This was the beginning of the New England County.

Form of County Government.—In England the County Government was in the hands of a Court of Quarter Sessions, which was composed of the Justices of the Peace of the county, and the Grand Jury. It held four meetings each year, and, besides being a court for the trial of cases at law, it exercised supervisory control over township or parish officers, supplemented the parish government in the administration of the poor laws, the laws concerning highways, taxation, and various other matters. The form of the county governments set up in America followed pretty closely the English model, but in New England the business of county government has been pretty closely confined to the holding of courts of law, the keeping of court records, and the care of prisoners. In New England the town still retains a large part of the business which in other parts of the United States is attended to by counties. At present the New England county supplements the town in the matter of bridges and highways, and in some places in the matter of poor-law administration, the business being attended to, not by the court, but by county commissioners elected by the people. Among other county officers are a Sheriff, a Treasurer, a Register of Deeds, and a Clerk of Courts.

Local Government in New York.—As in New England, the first local governments in New York were chiefly townships; but these came not from England but from Holland. When the English took possession of New Netherlands, in 1664, arrangements were made for the organization of counties. The name Ridings was given to the first three counties, after the example of the three Ridings of Yorkshire, England. The form

was an exact reproduction of the English model, a Court of Quarter Sessions, composed of Justices of the Peace and the Grand Jury. In New York the township was not so strong as in New England. The county court absorbed a larger share of local business, and in 1703 a board was created to attend to its non-judicial business. The new board was called the Board of Supervisors, and was composed of one supervisor from each township. By this board a close relation is established between the township and the county. The supervisor is at the same time an officer of the township and of the county.

The form of township-county government, which originated in New York, has been reproduced with some variations in a number of the states farther west, in Michigan, Illinois, Wisconsin, and Nebraska. Under this form of government there is retained a good deal of life in the township. There is the town-meeting with power to legislate on a number of local matters, and there is a county administrative and legislative body composed of town representatives. If, under this system, townships are made subject to counties, they are subject to their own official representatives; and the system facilitates the shifting of business from township to county, or from county to township, as convenience may dictate.

Local Government in Pennsylvania. — Unlike New England and New York, Pennsylvania organized the county as the first local government. Its form was that of the English Court of Quarter Sessions already described. But in Pennsylvania the justices were at first elected by the people; afterwards they were appointed

by the governor. Being the only local government, the county court attended to many kinds of business which were not judicial. By various statutes, beginning with 1724, the non-judicial business was taken out of the hands of the court and placed in the hands of commissioners elected by the people. As population increased, townships were organized for the purpose of choosing local officers to assist the county government in the execution of the law. The townships which were thus organized became an important agency. In some parts of the state they took the entire burden of caring for the poor. Township supervisors have the care of highways, and township assessors value the property for purposes of taxation. But the townships thus originating have no town-meeting with powers of local legislation; the legislative function is exceedingly limited, and is in the hands of a representative township board. Nor does the Pennsylvania township have any representation in the county board, as do the New York townships.

Townships on the Pennsylvania model are reproduced in states farther west, — in Ohio, Indiana, Iowa, Missouri, and Kansas.

Local Government in Virginia. — For the first few years, the government of the colony of Virginia resembled a military despotism. The first Colonial Assembly, in 1619, had in it representatives from eleven local areas called hundreds, towns, cities, "gifts" and plantations. From the name given to the assembly, the House of Burgesses, the chief local unit seems to have been the town or borough. Parishes were also early organized on the English model. In 1634 the legisla-

ture passed an act for the division of the country into eight shires, to be "governed as the shires in England." Many things contributed in Virginia to cause the county to grow at the expense of all other forms of local government. Those having control of affairs were descended from county families, or country gentlemen in England who were most familiar with county government. The land in Virginia was held in large estates, or plantations, on which a single crop was produced. The growth of negro slavery tended to perpetuate the system of large plantations. There existed also the English custom of entail, whereby the lands were kept undivided in a family. Towns and villages did not flourish. The Virginia county was the most perfect reproduction of the English shire to be found in America. The justices who composed the Court of Quarter Sessions were appointed by the governor. In course of time the members of the Court adopted the practice of nominating candidates to fill vacancies. Still later, when the nominees received appointment as a matter of course, the Virginia county came to be governed by what was virtually a close corporation filling its own vacancies. Thomas Jefferson mentions counties in Virginia where the government had fallen into the hands of one family.

Local Government in the South. — The causes which operated in Virginia to exalt the county at the expense of other forms of local government prevailed in the South generally. Political affairs were managed by country Esquires, or Justices of the Peace. The Virginia form of county government became almost co-extensive with the institution of slavery. The county

court and the justices attended not only to the judicial business but also to other local matters. The state governments of the South were highly centralized. Only state officers were chosen by popular election. All other officers were appointed. It was not until after the Civil War that there appeared a general disposition to establish local government on a popular basis. The changes in the South in recent years form almost an exact repetition of the experience of Pennsylvania in the colonial period. County Commissioners elected by the people attend to the non-judicial business of the county court, and, in many places, townships begin to appear, with officers chosen by the voters of the locality.

General Remarks. — It thus appears that three distinct systems of local government have resulted from the transfer of English local institutions to America.

1. The Township System in New England, in which the greater part of local business is retained by the towns. The county has an altogether inferior position. The town is the local unit, and is for the most part the basis of representation in the state legislature.

2. The Township-County System which prevails in New York, Pennsylvania, and the more western states, in which the business of local government is divided between the township and the county. Here the county is the chief local unit and the basis of representation in the legislature. Of this system there are two varieties. In the first the town-meeting is retained with limited legislative power, and the county board is composed of representatives from townships; as in New York, Michigan, Wisconsin, Illinois, and Nebraska. In the second

there is no town-meeting, and no township representation on the county board, as in Pennsylvania, Ohio, Indiana, and Iowa. In Minnesota the townships have the town-meeting, without representation on the county board.

3. The County System of the South in which the county has been the one local government of great importance. The southern county was an attenuated English shire with the towns left out.

Of the different forms of local government the New England town is the best for the political education of the citizen. In the town-meeting all the citizens have a direct share in transacting a great variety of important governmental business. The mixed township and county system gives opportunity for a large number to share in local affairs, but its chief merit is found in its convenience for the despatch of local business. The Southern system has no merit as an agency for general political education. Its efficiency depends entirely upon the character of the county justices.

CHAPTER III.

ORIGIN OF STATES.

We get our towns, townships, and counties from institutions transplanted directly from the Old World; but our states were not thus derived. Above the shire, in England, stood the general government of the kingdom, consisting of (1) The King and his Ministers or Council; (2) Parliament, composed of the House of

Lords and the House of Commons; (3) The Assize, or Circuit Courts, and other high courts. This was the model for the general government in the colonies, so far as they had a model. But during the century in which colonies were founded, the English government was in a most unsettled condition. The king claimed that all power, legislative, executive and judicial, rested in him; that it was the duty of Parliament and the judges to assist him in governing. Parliament claimed that the making of laws was its business, and that it was the duty of the king to observe, obey and execute the laws of Parliament. The judges, being appointed by the king, were generally subservient to his will. When the colonies were founded, the true character of the English government was not determined.

Motives for Founding Colonies. — The founding of colonies was the result of various causes and motives. The government and the ruling classes desired to extend the dominion and commerce of England, and to make good their claims to the territory of North America, against their rivals, France, Spain and Holland. To accomplish these ends, the kings of England were induced to grant liberal charters, and to bestow many favors which would otherwise have been withheld. The motives on the part of colonists were a desire to better their condition, and a love of adventure; but their love of liberty and their devotion to religious convictions for which they had been persecuted at home, had most to do in determining the character of government in America. Some of these colonists came with the definite intention of preserving English liberty by founding a free state in the wilderness. Many were men of un-

usual religious fervor. They would die rather than disobey conscience. Persecution sent many Europeans to America. Persecuted Puritans and Pilgrims (or Separatists) founded the first colonies in Massachusetts; persecuted Quakers founded Pennsylvania; persecuted Catholics found for a time a refuge in Maryland; persecuted Protestants, from France, found homes in the Southern colonies. These all might have lived peacefully in their former homes, if they had consented to violate their consciences.

The First Permanent Colony. — Early in the seventeenth century, the French began to make settlements in Canada. In 1606 a Company was chartered, in London, England, for the purpose of founding colonies in America. The following year this Company began a settlement on the banks of the James River. According to the charter the colony was to be governed by a Superior Council in England and an Inferior Council in Virginia; and the members of these governing bodies were appointed by the king. The colony did not prosper, and to prevent the entire failure of the enterprise, the king granted in quick succession two new charters to the London Company. A large share of the government of the colony was transferred to the merchants who were incurring the expense.

The Governor and his Council. — The first office of permanent importance to appear in the general government of the colony was that of Governor. The Inferior Council of seven, residing in Virginia, had quarrelled among themselves, and in the new charters power was centralized in a governor named by the London Company and approved by the king. As the king of Eng-

land had associated with him a Privy Council composed of the chief men of the kingdom, so the governor of the colony called the chief men of the colony to assist him in the government. As the king and his council in early English history were at the same time law-makers, law-executors, and judges, so the governor and his council at first performed all the functions of a general government. They made laws, they administered laws, they were the highest court of appeal in cases at law.

The First Legislature.—In 1619 Governor Yeardley, acting in accord with the wishes of the London Company, called upon the eleven settlements along the James River to elect two delegates each, to meet with his council and take part in the government of the colony. This body received the name of House of Burgesses, and is memorable as the first representative assembly in the New World. At first the Burgesses sat in one body with the governor and his council, as in England the first representatives of counties and boroughs sat with the lords and bishops who composed the king's council. Later the elected members adopted the practice of meeting by themselves; and the governor and his council then became known as the Upper House. When Virginia separated from England, in the Revolutionary War, provision was made in the new constitution for electing the members of the Upper House, and its name was changed to Senate.

Civil Strife.—As previously stated, there was, during this century, an almost constant strife between the king and Parliament, and this strife extended to Virginia, and had much to do in determining the course of its history. The London Company were in sympathy

with Parliament; and because of their opposition to the arbitrary rule of the king they were the more disposed to establish and maintain the "Little Parliament" in Virginia. In 1621 the Company drew up and sent to Virginia a very liberal frame of government, giving to the colonial legislature important powers. The king retaliated by dissolving the London Company and taking the government of the colony into his own hands. Virginia thus became a royal province in 1624. The governor thenceforward was appointed by the king, and he selected his own council and appointed the other judges. But the Virginians still clung to a share in the government through their representatives. The king sought to replenish his treasury by obtaining a monopoly of Virginia tobacco, and the legislature insisted upon liberal terms. A tyrannical governor, Harvey, was thrust out of the colony for wrong-doing in 1636, but was immediately restored by the king.

Virginia Royalists. — Many of the Virginians were descended from families of the English nobility; and while they were pleased to have their own way in colonial affairs, they had strong sympathies with the king in his struggle with Parliament. They were horrified at the beheading of Charles I., in 1649. The legislature passed a resolution inviting Charles II. to come to Virginia. Parliament immediately sent out a commission to bring into submission the rebellious colony. The Virginians yielded at once, and during the ten years of the Commonwealth they were permitted to exercise almost entire self-government. The Assembly chose the governors and provided for the revenue. The colony enjoyed great prosperity during this period.

Berkeley and Bacon. — When Charles II. was acknowledged king of England, in 1660, the loyal Virginians at once accepted him as their king, and were rewarded for their loyalty by a long term of tyrannical rule. Berkeley was appointed governor, and for sixteen years he ruled without a newly elected assembly. At length his tyranny became so intolerable that the colony arose in rebellion under the leadership of Nathaniel Bacon, a Virginia planter. For a time the insurgents were successful, and Berkeley was driven from the capital. But upon the sudden death of Bacon, Berkeley returned to power, and hanged a score or more of the Virginians, almost without trial, so that Charles was led to exclaim: "The old fool has hanged more men in that naked country than I have done for the murder of my father!" The effect of these experiences was to lead Virginians to prize the privilege of self-government. When Parliament gained a final triumph over the king, in the Revolution of 1688, the Virginians were quite willing to take the full power which was permitted to their Little Parliament. When, nearly a hundred years later, another king and Parliament proposed to tax the colonies without their consent, the Virginians were among the first to sound the alarm and voice the sentiment of American liberty.

Similar Strife in Other Colonies. — The experience of Virginia was repeated with variations in a number of the colonies. The Carolinas were for a time in the hands of governors appointed by the king of England and certain noblemen to whom he had given the province. Later, the king took the province from the noblemen. Here, also, there was a contest for legislative repre-

sentation, with times of intolerable tyranny, followed by a long period of comparative freedom. When New York was taken from the Dutch, in 1664, it was given by the king to his brother, the Duke of York. For a time the colony was ruled by governor and council, with no representative assembly. Discontent and strife continued until an assembly was granted, in 1683.

Proprietary Colonies. — The right to found colonies, and enjoy certain benefits arising therefrom, was given not only to mercantile companies, as in the case of the London and Plymouth Companies, but also to noted individuals. These colonies, which were called Proprietary, all proved temporary, except Maryland and Pennsylvania. Maryland was given to Lord Baltimore and his heirs, and Pennsylvania to William Penn and his heirs. With slight interruptions these continued till the Revolutionary War. The Proprietary Colonies were under a governor named by the proprietor, and during the greater part of the time enjoyed representative assemblies. The Pennsylvania charter gave the people a liberal share in the government, and Pennsylvania was, from the first, one of the freest of the colonies.

The First Charter Colony. — The part of the territory claimed by England which was most threatened by rival nations, was the country between the Hudson River and the Bay of Fundy. The French began a settlement in Nova Scotia before the English settled at Jamestown. A little later the Dutch began a colony on the Hudson. The Plymouth Company failed to get Englishmen to live on their lands. The Pilgrim Fathers, who came in 1620, were a slight security against

the French and the Dutch. A new "Council of Plymouth" was organized in 1620 in place of the old company, and received full powers to form settlements in the territory between the latitudes 40° and 48°. In 1629 a company of Puritans secured a grant of land from the Council of Plymouth, north of the lands already occupied by the Pilgrims. The king gave to this company a liberal charter for the management of their colony. The company, whose real design was to found a free colony to resist the tyranny of the king, emigrated in a body the following year, taking their charter with them. According to its terms the colonists who were members of the company chose their own governor, deputy-governor and eighteen assistants. Later, all the colonists who were members of the church were admitted into the company. The governor and assistants received the name of General Court, and were empowered to exercise general legislative, executive, and judicial control over the colony. In 1634 representatives from the various towns formed a part of the General Court and began to assume control. Thus was established the oldest of the charter colonies in America.

Voluntary Associations. — The colony founded at Plymouth in 1620 was a purely voluntary association. The settlers had no authority from any source for their acts. For several years the form of their General Court differed in no respect from a town-meeting. It was made up of all the freemen of the colony, assembled to transact the business of the colony. In 1639 representatives were chosen from the towns to attend to matters of general interest. Plymouth became a part of Massachusetts under the new charter given by Wil-

liam III., in 1691. Rhode Island was at first a voluntary association founded under the guidance of Roger Williams, who had been banished from Massachusetts. For many years the government was a pure democracy, in which all the freemen had an equal share in making laws and directing the affairs of the colony. As population increased, a representative assembly was formed. A charter was obtained from the Long Parliament in 1644. Later, when the acts of the Long Parliament were repudiated by the Parliament of Charles II., a new and very liberal charter was granted by the king in 1663. The first colonies in Connecticut were unauthorized associations, but fortunately they secured a charter from the king in 1662, which confirmed all the privileges of self-government which they had previously assumed.

Struggle for the Charters. — Thus the three oldest New England colonies came to be governed by liberal charters given by the king. They had a taste of tyranny for a brief time, under the rule of Andros, who was sent to New England by James II. to take away their charter privileges. But when the people of England drove James from the throne, the people of New England banished Andros and regained their liberties.

The Colonies become States. — The part of the general colonial governments most highly prized was the representative assembly. As the people of England looked to the House of Commons for protection against kings, so the colonists looked to their assemblies. When, as a result of the century of strife, the Parliament of England vindicated its right to rule, the colonists recognized this right as secured to their own

assemblies. It served greatly to confirm this view that the English government left the colonies in almost entire control of their affairs for about seventy years after the triumph of Parliament in 1689. When George III., who came to the throne in 1760, asserted the right to tax the colonies without the consent of their representatives, he was looked upon as a violator of the English constitution. The wisest statesmen in England in the days of George III., and nearly all Englishmen to-day, regard the king and his party as the real Revolutionists, while Washington and his associates stood for the dearly bought liberties of the English constitution. In that contest with the king they were driven to renounce their allegiance to the English government, and to make good the declaration "that these United Colonies are, and of right ought to be, free and independent states."

Classification of the Colonies. — From the foregoing paragraphs it will be observed that the colonial governments may be divided into three general classes: 1. Charter Colonies, as Massachusetts, Rhode Island, and Connecticut, which were governed according to charters granted to them by the king of England. 2. Proprietary Colonies, as Pennsylvania and Maryland, where the grant was made to an individual and his heirs, in whose hands was placed the general supervision of the colony. 3. Royal Provinces, where the king appointed the governors and exercised general supervision over the colony. Nearly all the colonies, during a part of their history, were governed as Royal Provinces.

State Offices derived from Colonial Governments. — When the colonies became states, by assuming independence, the governments were in many respects changed: 1. The House of Representatives, or the lower house in the state legislature, was derived from the colonial assembly. This was the one part of the colonial governments to which the people were greatly attached, and it was continued in the new state with little change. 2. In the colonial governments the Governor and his Council, in addition to being the chief executive, served as an "Upper House" in the legislature, and were the highest court of appeal in the colony. A new house, called in most of the states a Senate, was elected to fulfil the legislative duties of the Governor and his Council. 3. The Governor was continued as the chief executive officer. He ceased to be a member of the legislature, and instead of being appointed by king or proprietor he was chosen by popular election, or, in a few of the states, at first, by the legislature. 4. To attend to the judicial business of the Governor and his Council, Supreme Courts were established.

This general description cannot be applied to all of the thirteen states. As will be seen in the next chapter, Rhode Island and Connecticut became states with almost no modification in the form of government. Pennsylvania for several years had only one house in the legislature.

CHAPTER IV.

ORIGIN OF STATE CONSTITUTIONS.

It will be observed by reading a state constitution that it contains: 1. A bill of rights. 2. A frame of government, which is the essential part of the constitution, describing the officers and their duties. 3. Various minor provisions defining the boundaries of the state, specifying what persons have a right to vote, the method of amending and ratifying the constitution, and requirements concerning schools, corporations, and other matters.

The Bill of Rights. — The bill of rights has the effect of limiting the power of the officers of government by specifying the rights and privileges which they must not take from the citizen. This part of our constitutions is derived in part from documents memorable in English history. 1. In 1215, King John, having incurred the hatred of all classes of his subjects, was met by his great lords in arms at Runnymede, on the Thames River, and compelled to sign a document which contained a summary of all the rights, privileges, and immunities which were then reckoned as belonging to Englishmen. To this document, known as *Magna Charta*, Englishmen and Americans look as the source of many of their liberties. In it are recognized the principle of taxation by a representative body, trial by jury, the right to speedy trial, and compensation for property taken for public purposes. 2. The Petition of Right, exacted by the House of Commons from

Charles I. in 1628, defined some of these rights more clearly, and denied to the government the right to quarter troops upon citizens in time of peace. 3. The Habeas Corpus Act passed in 1679 made it more difficult for the government to keep a citizen in prison without just cause. According to this act one who thinks himself unjustly imprisoned may apply to any court in the vicinity for the privilege of the writ of habeas corpus. It then becomes the duty of the court to issue an order commanding an officer to bring the body of the prisoner into court and show cause why he is held; and if sufficient cause is not shown, the court must require his release. 4. Last of these documents is the Bill of Rights, drawn up by Parliament at the time of the final triumph over the Stuart kings, in 1689, from which both the name and the form of this part of the American state constitutions have been derived.

Town Charters. — There is little in the general government of England from which the idea of a written frame of government may be derived. The English frame of government is not committed to writing. But there are certain minor and local documents which have an important relation to American state constitutions. William the Conqueror addressed to the Port-Reeve and burghers of London, French and English, the following: "I do you to wit that I will that ye twain [English and French] be worthy of all that ye were worthy of in King Eadward's day; and I will that every child be his father's heir, after his father's day; and I will not endure that any man offer any wrong to you. God keep you." This would seem a pretty lean

constitution for a town, yet it is the beginning of that remarkable series of documents, known in history as the charters of English towns. These charters not only granted rights and privileges, but many of them contained a frame of government for the town.

The Grand Model. — One of the first documents to receive the name of constitution in America was the famous GRAND MODEL prepared by John Locke in 1669. This was called "The Fundamental Constitutions of Carolina." It was certainly an elaborate paper constitution. The Englishmen who were expected to live according to its provisions paid little attention to it. They went right on, making constitutions after the manner of their ancestors, by forming such habits of government as their circumstances seemed to require.

Colonial Charters. — The charters given to the London and Plymouth companies were not different from other charters which kings had granted to guilds and mercantile companies in the towns and cities of England; yet they contained an outline of a constitution for an American colony. The charter given to the Massachusetts Bay Company was transferred to America and used as a written constitution for the colony; and when Massachusetts became a state the colonial charter, granted by William III. in 1691, served as a model for the state constitution. The people of Connecticut had a most liberal charter; and, when the Revolutionary War broke out, the legislature put forth this declaration: "The people of this state being, by the providence of God, free and independent, having the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and having

from their ancestors derived a free and excellent constitution of government, whereby the legislature depends on the free and annual election of the people, they have the best security for the preservation of their civil and religious rights and liberties." Then follows an act adopting the charter given by Charles II. as "the civil constitution of the state, under the sole authority of the people thereof, independent of any king or prince whatever." This act remained in force till 1818, when by a small majority the people displaced the old constitution by a new one.

Rhode Island. — The colony of Rhode Island likewise had a liberal charter given by the same king. At the time of the Revolution they do not appear even to have taken the trouble to adopt their old charter as their state constitution, but went right on using it as the constitution until 1842. When the attempt was made to dispense with the charter and adopt a new constitution, it created such a turmoil that it was necessary to invoke the aid of the federal government to preserve order till the state adopted its modern organic law.

The State Constitutions. — With the exception of Rhode Island and Connecticut each of the thirteen states framed and adopted a state constitution. In nearly all cases this was done by a convention of delegates chosen for the purpose. The constitution when framed was commonly adopted by the convention, and was carried into effect by its order. In some cases, however, it was submitted to the people for ratification.

These constitutions renounce the authority of the king of England, and set forth the doctrine that all government of right belongs to the people. Some of

them state that government is a social compact "by which the whole people covenants with each citizen, and each citizen with the whole people." In these documents may be found a statement of all the rights ever claimed by Englishmen. The bill of rights is, in some cases, separate from the constitution. The convention of New Jersey "agreed upon a set of charter rights and the form of a constitution in the manner following," etc. North Carolina presents first a long bill of rights, and then, under a separate title, "The Constitution, or Form of Government, etc."

These constitutions refer to the people as the source of authority. In some cases they record that the framers are acting in accordance with the recommendation of the Continental Congress. New Jersey alludes to the Congress as "the supreme council of the American colonies." New York quotes entire the act of the Continental Congress recommending the colonies to form governments of their own, and also the whole Declaration of Independence.

The Three Departments of Government. — In all these constitutions provision was made for the three departments of government, — Legislative, Executive, and Judicial. In all except Pennsylvania the legislature had two houses. In some cases the chief executive officer was chosen by the legislature. Maryland put into the bill of rights the doctrine "that the legislative, executive, and judicial powers of government ought to be forever separate and distinct from each other." And yet, in the body of the constitution, the House of Delegates was empowered to "commit any person, for any crime, to the public jail, there to remain till he be dis-

charged by due course of law"; and there are other provisions conferring judicial power on the legislature. The doctrine of the three distinct departments of government was most explicitly stated in the constitution of Virginia.

The First State Constitutions Models for Later Ones. — These state constitutions, framed by the people of the thirteen original states when the Revolution threw them upon their own resources, have served as models for the federal Constitution, and for all the other state constitutions which have since been made. New states have been formed by the division of other states, and out of territory which never was connected with any state. Vermont, Kentucky, Tennessee, Alabama, and Mississippi were made from the territory of older states. Maine was taken from Massachusetts, and West Virginia from Virginia. The greater part of the other states have been organized out of United States territory. Texas was annexed to the United States with a constitution already formed.

The Making of a New State. — The ordinary process by which a state comes into existence is as follows: Citizens of the United States, entering unoccupied territory, make for themselves such government as they can. When sufficiently numerous, they are supplied with a territorial government by act of Congress. As the population increases, and a desire arises for a state government, Congress passes what is called "an enabling act." In pursuance of this act, the people of the territory agree upon a state constitution, and, if it is approved by Congress, the territory becomes a state. In some instances, however, the people in the territory of

a proposed state have adopted a constitution, and have been admitted by Congress without an enabling act.

CHAPTER V.

THE ORIGIN OF THE FEDERAL CONSTITUTION.

The Union of New England Colonies. — A notable attempt to form a confederation among English colonies in America occurred in 1643, between the colonies of Massachusetts, Plymouth, Connecticut, and New Haven. Representatives from these colonies met and drew up a constitution, providing for mutual protection and the distribution of burdens, for the return to each colony of escaped criminals and servants, and for various other matters of common interest. Two commissioners were chosen from each colony to exercise the powers granted by the constitution. But the constitution provided that the colonies should "each of them, in all respects, have peculiar jurisdiction and government within their limits respectively." It seems to have been difficult, in practice, to maintain a general government which could act efficiently, and at the same time leave each local government in all respects independent.

The Albany Convention. —War and common dangers made it desirable to have a general government for all the English colonies in America. Before the beginning of the great contest between England and France for the possession of North America, the English government recommended to the colonies in America the formation of a union for common defence. Representa-

tives from a number of the colonies met in Albany in 1754, and adopted a plan of union subject to the approval of the English government and the separate colonies. The English government rejected the plan, because it gave too much power to the proposed colonial government; and the colonies rejected it because it gave too much power to England.

Colonial Congresses. — The wars between the English and the French had habituated the colonies to united action in war. The attempt of the English government to violate their constitutional rights, by taxing them without their consent, soon taught them to consult and act together in matters of civil government. In the Congress of 1765 the representatives from the colonies gave united expression to their views. In the ten years following, the colonists were agitating for their rights under the English Constitution. They agreed upon plans of opposition to British tyranny, and carried them into effect by voluntary associations and by the force of public opinion. A congress met in 1774, and gave full expression to colonial sentiment, and before adjourning recommended another congress on the tenth of May, 1775.

The Continental Congress. — This body of representatives, coming together soon after the battle of Lexington, assumed the name of Continental Congress for the United Colonies of America, and began at once to act as a government. They voted to raise armies, appoint generals, issue paper money, and did whatever the exigencies of the time seemed to demand. In the following year the Congress passed the Declaration of Independence. There was no written federal consti-

tution. Each state was engaged in forming and administering a constitution for itself. It was but natural, therefore, that there should be an attempt to form a written federal constitution.

The Articles of Confederation. — The Articles of Confederation were adopted by Congress in 1778, but were not ratified until near the close of the war. This constitution proved to be unsatisfactory. It left the states sovereign, free, and independent. No adequate provision was made for the enforcement of federal laws. There was a federal debt, and no means of payment. There were disputes between the states which threatened civil war. Each state had a separate system of duties and imposts, which led to great confusion in commerce. The paper money issued by Congress had wrought such injustice as to madden multitudes to the point of rebellion. The statesmen of the period preferred to hold office in the state legislature rather than in the Continental Congress. The confederacy was on the point of dissolution when a movement was begun to amend the constitution.

The Constitution of the United States. — The men who met in Philadelphia in 1787 to amend the Articles of Confederation had already had several years of experience in making, amending, and administering the written constitutions of their respective states. The document which was the result of their deliberations was, in many of its features, modelled after the state constitutions. There were the three departments of government; there were two houses in the Legislature, the upper house chosen in a different way from the lower; the Chief Executive chosen by special electors selected

for the purpose; the Judiciary appointed by the Executive and confirmed by the Senate. All these and many other features of the federal Constitution were to be found in one or another of the state constitutions. In large part, the making of the United States Constitution consisted simply in a judicious selection from existing state constitutions.

The Relation of a State to the Federal Government. — One great difficulty encountered by the framers of the new constitution was the adjustment of power between the states and the federal government. Some thought it necessary to destroy all independent state power, to wipe out state lines, and make one homogeneous government. According to the view of these men, the states should hold the same relation to the general government that a county holds to a state. There were others who held that all real power should rest with the states: that the states should remain sovereign and independent; that no power should be exercised by a general government, except such as each state at the time approved.

Compromise. — A compromise was effected between these extreme views. In the new constitution certain powers were expressly conferred upon the federal government, and certain others were expressly forbidden to it. Certain powers were likewise forbidden to the states; and a clause was engrafted into the new constitution which declared that the Constitution, the laws, and the treaties made in pursuance thereof, shall be the supreme law of the land; and that the judges in every state shall be bound thereby. There is also a clause requiring all officers in the several states to be bound by

oath to support the Constitution of the United States.[1] An amendment to the Constitution declares that powers not delegated to the United States are reserved to the states respectively, or to the people.[2]

All the states were finally induced to ratify the new constitution. Quite as much credit is due to the firm hands which took up the reins of administration, and actually organized the new government, as to those who made the paper constitution. In such hands a much poorer constitution might nevertheless have been so administered as to give a good government. In unskilful hands a much better constitution might have utterly failed. Our new constitution was not really made until Washington, Hamilton, Jefferson and their associates had given us an actual government in accordance with their understanding of its provisions.

CHAPTER VI.

ENGLISH AND AMERICAN GOVERNMENTS COMPARED.

As we compare the government of the United States with that of England there appear many points of similarity and likewise many points of difference.

The English Constitution based upon Custom.— The English have never attempted to commit their frame of government to writing. They consider that action of authorities constitutional which is customary or which has been determined by a law of Parliament.

[1] Article VI. [2] Amendments, Article X.

The people have always claimed certain rights and privileges which were believed to be in accord with the good laws and customs of the past. After these rights were summarized in Magna Charta, the Petition of Right, the Habeas Corpus Act, and the Bill of Rights, people naturally looked upon these documents as a part of the constitution of the government. But the king, the Lords, the House of Commons, and the Church have also enjoyed by custom the right of exercising certain powers. When the exercise of one of these powers is felt to be hurtful, it has been the habit of the governing classes not to abolish it directly by a law or by a change in a written constitution, as in America, but by various political devices to prevent its being exercised for a time, and then to declare it lost for want of use. Thus the crown has lost the veto power and the choice of ministers, and the House of Lords its full equality with the Commons in the making of laws.

The Veto Power. — There was a time when the king had an undoubted right to veto a bill passed by Parliament. Kings exercised this right without question. As the Constitution of England is now understood, the crown has no such right. As a recent writer of high authority has expressed it: "The queen has no such veto. She must sign her own death warrant if the two Houses unanimously send it up to her."[1] Once it would have been a violation of the English Constitution to disregard the king's veto; now it would be a violation of the Constitution for the queen to exercise

[1] Bagehot: *Constitution of England.*

the veto power. This change in the Constitution has been effected simply by the denial of the right by those interested in the promotion of the power of Parliament, and by the kings ceasing to exercise the right.

Choice of Ministers.—Again, there was a time when kings had the undoubted right to choose their own ministers. The queen still goes through the form of appointing them, but is really without power of choice. In the election of 1880, when it was evident that the Conservative Party was beaten, Lord Beaconsfield's ministry resigned. The English Constitution, or English custom, requires that a ministry shall resign their office as soon as they lose the support of a majority of the House of Commons. When Beaconsfield resigned, the queen sent for Lord Hartington to make up the new ministry. Immediately the cry was raised that the queen had violated the Constitution, which required her to send for the leader of the Liberal Party to make up the new ministry, and the leader of that party was Mr. Gladstone. Now, in fact, there was at that time a real confusion in the Liberal Party as to who was their leader. Mr. Gladstone had resigned, and Lord Hartington had been put forward as leader. But when the campaign came on Mr. Gladstone showed himself, by his unrivalled powers, to be the real leader. The queen, we may suppose, did the best she could. She sent for him who had been put forward as the formal leader. But when the nation demanded their real leader, the queen complied with the demand. All agree now that the queen has no real choice in the matter. This power once constitutional, is now unconstitutional.

Submission of the House of Lords. — At one time the House of Lords had equal power with the House of Commons. The Lords could reject any bill passed by the Commons. It would have been regarded as a flagrant violation of the Constitution to attempt to force the Lords to pass a law of which they did not approve. But this is no longer the case. A bill recently passed the House of Commons and was rejected by the Lords. The cry was raised that the Lords had done an unwarranted and unconstitutional thing. The leader in the House of Commons recently warned the Lords that he intended to use all the power which the Constitution furnished in order to carry a particular law, which was opposed by a large majority of the Lords. It is now understood that the Constitution furnishes to the House of Commons enough power to pass any bill, no matter how violently the Lords may oppose the measure.

Centralization of Power. — Another way in which the English differs from the American government is in the union of executive and legislative power. In America the tendency has been from colonial times, to place the legislative, executive, and judicial business of government more and more in the hands of separate officers; while in England there has been an opposite tendency, especially as regards legislative and executive business. In the time of the Stuarts, even the Parliamentary party looked upon the king as the head of the executive, and the king had a right to choose his own ministers. For centuries it had been the experience of the people that a bad king could thwart their will by refusing to execute the laws of Parliament. After the triumph of Parliament in the Revolution of 1688, it

became customary for the king to select his chief ministers who constitute his cabinet from that political party which had a majority in the House of Commons. This tended to harmonize the executive and the Parliament. But the crown still had great power. The king and his prime minister made appointments to the civil and military service and in this way controlled many votes, the whole number being comparatively small. Where patronage failed, votes were bought with money. By these and other means the king and his ministers continued to exercise a controlling influence over Parliament for more than a hundred years. By the reforms of 1832, 1867, and 1885, the elective franchise has been extended to nearly all male adults. Secret voting is also secured, and there are effective laws against bribery. A reform in the Civil Service in 1857 took from the crown the power of patronage and made appointment to office dependent upon competitive examinations. By these various reforms the crown has lost control over Parliament, and has thus lost all effective power.

The English Cabinet the Chief Lawmaker.— When a new cabinet is to be formed, the outgoing prime minister advises the queen to send for the man who is leader of the party having a majority in the House of Commons. This she does and invites him to form a cabinet. The new prime minister confers with the leading men of his party, and the various officers of the new cabinet are selected. The number in the cabinet varies from nine to sixteen. The members of the cabinet are members of either the House of Commons or the House of Lords. They are at the same time the chief executive and the chief legislative offi-

cers of the government. When the cabinet ceases to have the power to control legislation a new one is formed which has the power. In this way the two departments of government which have become separate in the United States have become thoroughly united in England.

The Judiciary in England. — If Congress or a state legislature should pass a law which was in conflict with the provisions of the written constitution, our courts would rule that such a law was void and of no effect. An English court may not thus rule that a law of Parliament is void, because to an English court there is no authority superior to a law of Parliament. The courts have no discretion; they must give effect to whatever Parliament enacts.

CHAPTER VII.

STATE AND FEDERAL GOVERNMENTS COMPARED.

THE United States is divided into states and territories, the states are divided into counties, the counties are divided into townships. It is natural to compare the relation which exists between a state and the federal government, with the relation of a local government within a state to the state government.

The Case of Connecticut. — Before 1639, several towns were planted on the Connecticut River. They were each in the possession of the powers common to a New England town. To supply the need of a general government, the citizens of the various towns met and adopted a written constitution, giving authority for a

general court, or legislative assembly, composed of representatives from the towns, a governor and a council chosen by the assembly, and all officers needful for a complete government. Before this government was created, the towns were in possession of all the powers which they chose to exercise. But in creating the general government they became subject to its action. The towns were still permitted to exercise a wide range of powers, but it was possible at any time for the general government to withdraw these powers.

The United States and Connecticut Compared. — The action of the people of the towns of Connecticut in 1639, is similar in some respects to the action of the people of the United States after the Revolutionary War. In each case the people felt the need of a more general government, and in each case they proceeded by adopting for the new government a written constitution. There is little evidence that the people of Connecticut feared that the new government would take from the towns their power in local matters. It probably has not occurred to many citizens of Connecticut that their town government was in danger because the state legislature had power to destroy it. But it did occur to the people of the Thirteen States that if they set up over them a general government, the state governments would be endangered. *To guard against this danger, the plan of creating a general government of limited delegated powers was adopted, and of expressly reserving to the states all powers not delegated. The integrity of the states is still further guarded by the policy of executing federal laws by federal officers, and not by officers of the states.*

State and Federal Executives. — In the states where there is a highly organized system of local government, the execution of the greater part of the laws rests not with the governor and the officers appointed by him, but with county, township, town and city officers, elected by the citizens of the locality. The governor is often in no way responsible for the execution of these laws. If the local officers neglect or refuse to execute them, any citizen interested may bring an action in the proper court to compel them to do so. There is therefore a marked difference between the executive department of the federal government and the corresponding department in the states. The President and the men whom he calls to his aid are personally responsible for the execution of federal laws.

City and Federal Constitutions Compared. — Cities have constitutions established by state authority. In a large city there is a legislative body with a wide range of powers. There is a city executive, of which the mayor is the head, and city courts to decide cases arising under city laws. In all these respects the constitution of a city resembles the Constitution of the United States. In each the powers of the legislature are conferred by a written constitution. In each case there is an executive to enforce the laws, and a court to interpret and apply them. But there is this remarkable difference between a city constitution and the federal Constitution: there is an appeal from the decisions of the city courts to the Supreme Court of the state on all questions involving the interpretation of the city constitution. This interprets the grant of powers according to the strict letter of the grant: implied powers are

not admitted. But in cases involving the interpretation of the federal Constitution, the Supreme Court of the United States is itself the court of final appeal; and the Supreme Court has interpreted the grant of powers to Congress not strictly but liberally. Congress is permitted to exercise a large number of powers not granted by the letter of the Constitution, but held to be implied in those which are granted. The Constitution does not say that Congress shall have power to regulate railways, but it does say that Congress shall have power to regulate commerce between the states, and railways are an agency of inter-state commerce.

Catechism. — The following questions and answers should be thoroughly committed to memory.

Question. What powers may be exercised by the government of the United States?

Answer. All powers granted to it by the Constitution of the United States.

Q. What powers may a state government exercise?

A. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people."[1]

In briefer form:

Q. What may the federal government do?

A. It may exercise any power granted to it by the Constitution.

Q. What may a state do?

A. It may exercise any power not in conflict with the Constitution, laws, and treaties of the United States.

The principle should be made clear that the United

[1] Amendments, Art. X.

States government is one of granted or conferred powers; while the states are governments of powers not conferred. The eighth section of the first article of the federal Constitution contains a list of powers conferred upon Congress. In a state constitution no such list is to be found. It is understood that a state may exercise any powers not in conflict with the federal government.

Q. Just what are, in detail, the things which may be done by the federal government and the things which the state may do?

This question does not admit of a complete answer. A partial answer may be gained by learning all the things that the two governments have done and are now doing. No one can say what powers they may exercise in the future.

Q. How may the federal and state governments be kept in harmonious action?

Here again is a question which does not admit of a complete answer. A partial answer is gained by learning their past and present methods of action.

PART II.

MATTERS CHIEFLY LOCAL.

CHAPTER VIII.

EDUCATION.

Origin of Public Schools. — The Englishmen who founded colonies in America were accustomed to the support of the church by taxation. The church was a part of the government. In the South the Church of England was established. In New England each town had its own Independent, or Congregational Church. The town chose its pastor and supported him by taxation. In some cases the pastor was also the school teacher. When another was chosen to teach the town school, he was employed by the town. In the course of time, through the multiplication of sects, and from other causes, the church became disconnected from the government; but the work of education by the government was still continued.

Extension of Public Schools. — In 1787 the Continental Congress passed an ordinance for the government of the territory north of the Ohio River. It was enacted that schools and the means of education should forever be encouraged. In pursuance of this policy, Congress set apart the sixteenth section in each town-

ship for the support of public schools. The proceeds of the sale of the sixteenth section come into the treasury of the state; and the state is thus committed to a public school system. In this way education by the state was extended to the West. Since the abolition of slavery, the Southern States have adopted a public school system; and the education of youth is now an important part of the work of every state in the Union.

A school, from its very nature, is a local institution. A child cannot properly be required to walk farther than two miles to school. It is desirable therefore that there should be a school-house within two miles of every home.

Geography of the School District. — In the country west of Pennsylvania, wherever the rectangular survey prevails, there is much regularity in the size and shape of the school district. The township is six miles square. It is customary to locate a public highway on each section-line. These highways divide the township into little squares of one mile each, and it is customary to locate a school-house at each alternate cross-roads, as indicated in Fig. 1. This plan gives to

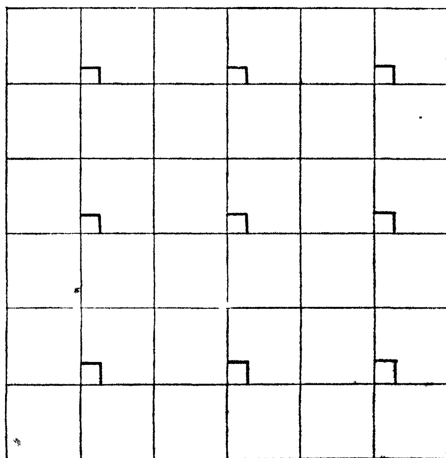


Fig. 1.

each township nine school-houses two miles apart. A school district is thus made two miles square, with a school-house in the centre. But this is an unfavorable shape. Those who live at the corners of the district are two miles from school. A more convenient method of forming districts, partially followed in some places, is indicated in Fig. 2. By this plan a district is formed,

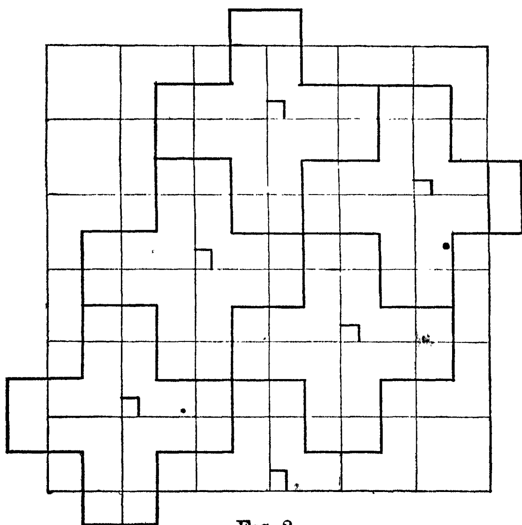


FIG. 2.

containing five square miles, instead of four; and no one who lives upon a public highway can be more than a mile and a half from school. According to this plan the children living on the same highway go to the same school; while on the other plan, they often go to different schools. But the plan makes it necessary to disregard the rectangular township as a local unit.

Area for School Government. — The word *district*, as used in the previous paragraph, means the area for a country school. In some of the states, this is made the area for local school government, but in other states a larger area is taken. The laws of Georgia make each county one school district for the management of schools. Other Southern states, deeming a county too large, have created townships for this purpose. In the states where the township is an important local government these are made by law school districts. It will be observed that there are two distinct uses of the word *district*, one an area for a single school and the other an area for school government. In nearly all cases towns and cities have a school government entirely separate from the country schools.

Forms of Government. — A variety of systems is used in the management of school districts. 1. The district system, in which the business is in the hands of officers chosen by the district area for one school. 2. The township system, in which officers chosen by the township have full control of all the schools in the township. 3. The mixed district-township system in which the business is divided between officers chosen by the smaller and those chosen by the larger area.

Whatever may be the form of a local school government, the work to be done is nearly the same in all. In the first place, the limits of the district, if not previously fixed by state law, are determined by the people in the locality or by local officers. The school-house is then located by vote of the citizens, or by the school officers. A tax for building is voted by the board or the citizens; and the house is erected

under the supervision of the school officers. The local school officers fix the rate of wages for teachers, and the time during which the school shall be taught. They employ teachers, co-operate in governing the school, supply fuel and apparatus, and in some places furnish the scholars with text-books. Some states make it the duty of school officers to compel the attendance of all children for a specified time.

School-District Officers. — Officers of the school district in the various states receive the name of school committee, school board, trustees, supervisors, or directors. Sometimes the business is committed to a single officer; more frequently to a board of three or more. The board organizes for the transaction of business, by choosing a president and a secretary. In states where the school funds are not held by township or county officers, there is a school treasurer.

Support of Schools. — Schools are supported either by a state fund or by a local tax. Many of the states have a fund derived from the sale of the lands given to the state for that purpose by the United States government. This fund is kept by many states as a permanent school fund, the interest on which is distributed to the school districts, in proportion to the number of persons of the proper age to attend school. Each district uses its share towards the payment of school expenses. A tax to supplement it when necessary is voted in some of the states by the legislature, elsewhere by the school district.

Teachers' Certificates. — One of the difficult tasks in the work of education is the securing of suitable teachers. It is found desirable to make a law forbid-

ding any one to teach in the public schools unless he has been examined by responsible officers, and has received from them a certificate of fitness for his duties. In some cases the examiners are the local school board. In other states there is a county educational board, which examines teachers and attends to other matters of general interest to the schools of the county. In still others, a single county officer attends to this business. Teachers' certificates are generally issued for a short time, one year or less. In some states the officers are empowered to issue certificates for a longer period.

City Superintendent. — In the large towns and cities it is found desirable to grade the schools and adopt a regular system of promotion from one grade to another. To provide for this work, it is convenient to place the entire oversight of the schools in the hands of one person. In many cases the city superintendent devotes his entire time to grading the schools, planning work for the teachers, and finding and introducing the best methods. By the continued services of skilled superintendents, many of the city schools have reached a high degree of excellence, not attainable without such supervision.

County Superintendent. — In country schools the need of superintendence is not so apparent as in cities. Confusion does often arise for want of it, but it is not so manifest as in a city. The schools are isolated. One district may have a good teacher, and make rapid advancement, while the next district may make little advancement. A new teacher, not knowing what has been taught, may go over the same ground, with little profit to the student. These things would not happen

under a skilled and faithful superintendent. To supply this need, many states have provided for a county superintendent, whose duty it is to examine teachers and issue certificates, to hold institutes for the instruction of teachers, to visit country schools, and to advise teachers in their work.

State Superintendent. — In nearly all the states there is a superintendent of public instruction, who has general oversight of the educational work of the entire state. One part of the duty of the state superintendent is to collect official information concerning the condition of the schools throughout the state. The officers of school districts are required by law to make out reports of their schools, and send them to the county superintendent. The county superintendent collects reports from all the districts in the county. From these he makes out a report to the state superintendent. In this way the superintendent is informed of the condition of schools in all parts of the state. He makes a printed report to the legislature, by which the law-makers may be informed of the needs of the schools. It is also the duty of the superintendent to suggest to the legislature ways of improving the school laws of the state.

Judicial Business of the Superintendent. — The superintendent gives directions to local officers in reference to the administration of the school laws. Many disputes arise as to the meaning of the law and its application to special cases. These sometimes occasion suits in the ordinary courts of law. In some of the states provision is made for the settlement of these disputes by the aggrieved parties appealing from the decision of the local board to the county superintendent. In case

his decision is not satisfactory, an appeal may be made to the state superintendent. In this way difficult points in the administration of the school law are settled with little expense to the parties interested. In many instances difficulties are avoided by the superintendent's publishing in advance what would be the application of the law to particular cases.

Township, County, and Normal Schools. — In some states the country school districts are authorized to unite and establish a central school of a higher grade, to which the more advanced students may be sent. In some counties a high school is maintained under the management of a county board. For the education of teachers, many states have established normal schools. These are usually controlled by a board appointed by the legislature, which also appropriates money for their support.

State Universities and Agricultural Colleges. — State Universities are maintained in many of the states. In most Western states these were founded by a grant of land for that purpose from the United States government. They are maintained by appropriations from the state legislature, and are governed by a state board of regents. For the encouragement of agriculture and the mechanic arts, Congress gave to each of the states, in 1862, a grant of land, the proceeds of which are invested according to the terms of the grant, and the income is appropriated to meet the current expenses of a college. The state receiving the grant is required to furnish land and buildings for the college, and to provide for its government.

A large part of the work of higher education is done

by endowed institutions, colleges, universities, and professional schools, without any help from the state. Likewise much common-school work is done by private enterprise, without aid from government.

Educational Work of the Federal Government. — The United States government maintains an Academy at West Point, for the education of army officers; another at Annapolis, to educate officers for the navy; and a college for deaf-mutes at Washington. A school for instruction in the Signal Service is maintained at Fort Whipple, Va. Common schools are also supported at the various military posts of the United States. Congress appropriates money for the education of Indians. In 1867, Congress established a Bureau of Education, to collect and publish educational statistics and other information for the benefit of educators throughout the land.

It thus appears that the work of public education furnishes an illustration of the uses of nearly all our governmental institutions. 1. The school district for one country school is sometimes organized into a local school government. 2. The township is generally a school-board area. 3. Towns and cities are made areas for educational work corresponding to the work done in district, township, and county for the country schools. 4. The county is found to be a convenient area for the supervision of the country schools. 5. The state is the source of law and authority for the public school system. The state also maintains an office for the general supervision of the schools, and it supports a few educational institutions of a higher grade. 6. The United States maintains an office for the collection and

publication of educational statistics, and supports a few schools for special purposes.

Public Schools and the Constitution. — To provide for the education of the people is not found among the powers conferred upon the federal government; it is therefore reserved to the states. If the states should not choose to establish public schools they would not be established. The Constitution does, however, give to Congress power to dispose of "territory and other property belonging to the United States."[1] Congress has chosen to dispose of the public lands in such a way as to induce the states to maintain a system of public schools. The people in many of the states, in forming a state constitution, have made it the duty of the legislature to maintain public schools.

The state government has full power to force the townships and counties to provide for schools. If local officers should refuse to vote a school tax required by law, they might be arraigned before a court and commanded to do it. If they still refused, they might be imprisoned for contempt of court. But the method which many states employ to induce delinquent districts to maintain schools is quite similar to the method used by the federal government to induce the states to do so. They give money to the districts which comply with the law requiring schools to be kept a prescribed number of weeks, and withhold it from districts not complying. This inducement is greatest in the states where a tax large enough to support the schools throughout the state is levied by the state legislature. In such a case an average district would be compelled

[1] Art. IV, sec. 3, cl. 2.

to pay money enough into the state treasury to support its schools during the required term, and would get nothing in return unless it complied with the law. Some of the states have succeeded in rapidly extending the schools to all the districts, by a free use of the taxing power of the legislature. Others have been equally successful while pursuing an opposite policy, giving to districts power to vote taxes upon themselves and maintain their own schools.

CHAPTER IX.

HIGHWAYS.

Highways and the Federal Government. — A clause in the Constitution gives to Congress power "to establish post-offices and post-roads."[1] Congress has often appropriated money for the building of bridges; and at one time the general government constructed a national road. But the development of the railroad system has had a great effect upon the relation of the general government to road building. Railroads take the place which would have been held by national roads.

Areas for Road Management. — Railroads have also affected road management within the states. There are almost no state officers having any share in road management; the business is committed to counties, townships, towns and cities. In some states townships are subdivided into road districts. The county is

[1] Art. I, sec. 8, cl. 7.

the division to which is commonly assigned the care of roads in the states where the county system of local government prevails, the township where there is the township system; while in the states having the mixed county-township system the business is divided between the two.

Road Building. — Road work consists in locating, draining, and grading the road, removing obstructions from it, building bridges and culverts, and providing a dry, hard surface for travel. Throughout the greater part of the United States the surface of the roads is composed of the natural soil. This is often muddy when wet, dusty when dry, and rough in cold weather. To remove these imperfections various methods of road-building have been devised. The most noted of these is the one invented by Mr. J. L. Macadam of Scotland, about a hundred years ago. To *macadamize* a road is to cover the natural soil to the depth of from six to ten inches with irregular fragments of granite or other stone, not over three inches in diameter.

Highway Officers. — For the making and repairing of roads, the territory is usually divided, by law or by the authorities of either the county or the township, into road districts, in each of which a road master has immediate charge. In many states the duty of locating roads, building bridges, and general supervision is vested in the county board, which is also empowered in a few states to employ a skilled engineer to aid in the work.

Toll Roads. — All of the states and territories except ten [1] authorize the building of roads by companies, or

[1] J. W. Jenks, Vol. IV, No. 3, Pub. Am. Econ. Ass'n.

corporations, which are allowed to repay themselves by collecting tolls from those who use the road. The toll charges are regulated by law. This system is generally condemned, and many states have made provisions for changing the toll roads into free public roads.

Road Taxes.—It is unusual for the state legislature to appropriate money for the building of roads. The power to do this is committed to the county board, or to the township, either in town meeting, or through a representative board, or partly to the county and partly to the township. In nearly all the states provision is made for the payment of a part or all of the road tax in labor.

Those who have given special attention to this question are of the opinion that a large proportion of the expenditures upon the highways is wasted. To expend time and money economically upon the roads requires a high degree of engineering skill. To prevent waste, the policy of employing a skilled county engineer to superintend the business seems worthy of special commendation. Official supervision has been so effective in improving the methods of public education that a similar system seems well suited to the improvement of road building. This plan would require, in addition to county engineers, a state engineer, who should receive reports from the county engineers and co-operate with them in the effort to find out and apply the most approved methods in each locality in the state.

Division of Labor between Township and County.—A bridge may be so situated as to be used chiefly by people of other townships. In such a case it would

be unjust to put the whole burden on the township in which it is located. In some of the states the county board builds all bridges, while the township makes the culverts and repairs the roads and bridges. Roads are sometimes divided into two classes: main, or county roads, and township roads. One class is kept up at county expense, and the other at the expense of the township. It is often difficult to determine what share of the cost of maintaining a particular road should be borne by the township and the county respectively. The New York plan of county and township government, in which the county board is composed of township supervisors, is well adapted to adjust the burdens of the two.

Canals and Railroads. — Before the building of railroads, many of the states undertook to construct canals. The state of New York still owns several canals, and some other states are part owners of canals. The building of railroads has often been aided by appropriations from states, counties, and townships. The money thus appropriated has usually gone to a company, and the government has acquired no share in the profits of the road. The fact that the power to grant money to railroad corporations has been often abused, has led the people of many of the states to insert in the state constitution a clause, withdrawing from the legislature and from the counties, townships, towns, and cities the power to make such grants.

CHAPTER X.

CARE OF THE POOR AND OTHER UNFORTUNATE CLASSES.

Efforts to limit Pauperism. — The states proceed upon the assumption that every person will support himself if he is able to do so. If a person is not able to support himself, our state laws require his kinsfolk, within specified limits, to support him. In case there are no kinsfolk able to support him, the law imposes the duty on the township, the county, or the town or city in which he has a lawful residence. States try to protect themselves from the burden of pauper relief by fining persons for bringing paupers into the state, and by sending from the state paupers who have not gained a legal residence. A township or a county may return to the township or the county from which he has come any pauper who has not gained a residence. It is the policy of governments to have poor persons supported by the community where they were living when their disability arose, and where, consequently, all the facts in the case are best known.

Support by Townships. — In many of the states the care of the poor is made, entirely or in part, the duty of the town or township government. Where the township has the entire care, it is customary to employ some responsible person to keep the poor. Overseers are chosen, whose duty it is to see that the laws concerning the poor are properly executed. When persons are in need of temporary aid, the officers furnish it, and encourage them to help themselves, and not to become a

permanent burden upon the government; this is called out-door relief. If it is found that the government is required to provide a large part of the support of individuals, they may be deprived of their liberty of action, and pass entirely under the control of the superintendent of the poor.

Poor-Houses. — It is often difficult and expensive to employ persons who have suitable homes to take care of the poor. To avoid this difficulty, the government has in many cases adopted the policy of owning a farm and buildings upon it for the care of the poor. A superintendent is then chosen to take charge of the house and farm, and support the poor according to the rules and regulations of the government. Paupers who are able are expected to work on the farm or in the house, and thus diminish the expense of their support. This is called in-door relief.

Support by Counties. — In case the government establishes a poor-farm, it may be cheaper and more satisfactory to do this on a larger scale than can be afforded by a township. The business then passes into the hands of the county, which maintains the house and farm, while the county officers make its rules and regulations and choose the superintendent. The township may still be required to furnish temporary relief to the needy, and to pay the county for the support of each person sent from that township to the county poor-house, thus retaining the chief burden of supporting the poor. In other states the county has the entire burden, and county officers furnish the entire relief, both in and out of the county-house.

Difficulties. — The help of the poor by the govern-

ment seems to be a simple matter, but it is believed by those who have given the subject most attention that there are few things which the government is called upon to do that involve greater difficulties. Methods of relief have been adopted which are believed to have been potent causes of disaster and ruin. A government cannot safely assume the support of persons who can be taught to support themselves. It is better for the government to use means to prevent poverty. In the care of the poor, as in education and in road-building, it is economy, in the end, for the government to adopt the most approved methods, and to seek to know what is best before making lavish expenditures.

The Insane. — Besides the poor, there are other unfortunate classes for whom the government makes provision. Insane persons require special treatment which it is often impossible for private individuals to provide. The care and treatment of the insane can therefore be best secured in homes provided exclusively for them, and under the charge of persons especially skilled in the treatment of nervous diseases. Private hospitals are sometimes established to which persons who are able to incur the expense send their insane friends. But, since many are not able to meet this expense, it becomes necessary for the government to make provision for them. There are but few insane persons in a township, and comparatively few in a county; but there are many in a state. It is found to be more economical, therefore, for the state to provide the institutions necessary for their treatment. In some of the states the counties pay to the state a fixed sum for the support of their insane in the asylum. Many insane

persons are kept in county-houses. These are, for the most part, cases which have been pronounced incurable. A charge for the support of a patient is sometimes collected from relatives if they are able to pay it.

The Education of Unfortunates. — Some states maintain special educational institutions for orphan children, for feeble-minded children, for the blind, and for deaf-mutes. Special provision is also now made in many of the states for juvenile criminals. These are on the border land between unfortunates and criminals, and are treated by the state as persons to be specially educated, corrected, and reformed. For this purpose, reform schools are established and maintained.

All these institutions are controlled by boards chosen by state authorities, and are supported by money appropriated by the state legislature, which makes all needful rules and regulations for their management. In some of the states a Board of Charities exercises general supervision over prisons and all institutions for the unfortunates.

Federal Relief. — The government of the United States maintains homes and hospitals for disabled soldiers and seamen, and an asylum for insane soldiers and for the insane of the District of Columbia.

Thus the relief of the poor and the unfortunate is chiefly in the hands of city, township, and county governments. The state provides for special classes, whose numbers are small, and the United States provides for some of those in its own service, and for some who are engaged in commerce upon the high seas.

CHAPTER XI.

TAXATION.

Need of Revenue. — The United States government has been the owner of most of the lands upon which we live. These have been sold, or have been given to individuals or to states. The land given to states is for the most part sold by the state, and the money is put into a permanent fund for the support of common schools or other educational institutions. With the exception of the amount derived from the sale of public lands, the money which the government receives must be collected from the people. The government engages in no productive business; it makes no money. And since the work of education, the building of roads, provision for unfortunate classes, the administration of justice, the support of armies and navies, and the many other things which the government is called upon to do, make a constant demand for a large amount of money or of property, it follows that an important part of the business of government is to collect taxes, to provide for the safe keeping of the money thus secured, and to expend it in such a way as to secure the objects for which it was collected.

The State System. — The greater part of the tax collected by the authority of the state is levied directly upon individuals and upon property. Some states levy a tax upon all voters, or upon all able-bodied men of a given age. This is called a poll tax, and is sometimes collected by requiring the person taxed to work upon

the public highways. The tax levied upon property is, however, the one chiefly relied upon for the support of state governments.

Valuation of Property. — To collect a property tax there must first be a valuation of the property. The following system prevails in many states: Towns, townships, and cities choose assessors, who make a list of all taxpayers and all taxable property within their respective localities. The assessors are required to affix the true value to all the property in the list. The value actually affixed to property in the assessors' list is generally less than the real value. It makes no difference in the result; since, if the sum which stands for the value of the property be small, a proportionally higher rate is paid. The point of especial consequence in the valuation is that no taxpayer's property be rated either higher or lower than that of others.

Boards of Equalization. — To correct errors, the assessors' list passes into the hands of a local representative board, and errors and inequalities are corrected. If all the property within the township is proportionally valued, it makes a just list for the collection of the township tax. But for the collection of a county tax, where the township is associated with other towns, the lists are not just unless all the towns are rated on a uniform valuation. To equalize the assessments of the different municipalities within the county, a county board receives a copy of each of the assessors' lists, compares them, and makes such changes as justice seems to demand. A state board of equalization then receives the lists from all the counties, and corrects inequalities between the different sections.

Levying of Taxes. — When the taxable property is legally valued, the various governments within the state can determine their rate of taxation. 1. A representative school board, or a meeting of the voters in the school district, determines the amount of tax to be raised in the district for school purposes, and the rate of the school tax. 2. The citizens in town meeting, or through a township board, vote a tax for road purposes and for other needs of the township. 3. For incorporated towns and cities, the town or city council fixes a tax. 4. A county board estimates the expense of the county government, and levies a corresponding tax upon the county. 5. The state legislature determines the amount of money necessary for the payment of state officers and the support of the state institutions, and other objects, and prescribes the tax to be paid into the state treasury.

Tax Collectors. — In some states the township is the chief tax-collecting agency; in others the county is the chief agency. Where the county system prevails, a county officer takes the assessors' lists of the entire county after they have been corrected by the various boards, and also an official statement of all the taxes voted by the different governments within the state, and from these he estimates the amount of tax to be paid by each taxpayer in the county. The book containing these estimates passes into the hands of the county treasurer. The law fixes the time of payment. If the tax is not paid before the specified time, a fine or penalty is added. If the tax is still unpaid after a further specified time, the property is sold at public auction. The government thus collects enough money

to pay the tax and all the expenses incurred in the sale, and gives to the purchaser a tax-title to the property. The tax-title becomes a more perfect title if within a time specified by law the former owner of the property does not redeem it by paying all costs.

Treasurer and Auditor. — The money thus collected by the county treasurer is for the support of school districts, townships, incorporated towns and cities, the county, and the state. The county treasurer must open an account with an officer in each of these governments, and see that the money collected for each goes to its proper place. The treasurer is required to give a bond, and another county officer or auditing board is required to keep a strict account of all the money paid into or out of the county treasury. The treasurer pays out no money save as he is ordered to do so by the auditing officer; and the treasurer's account should correspond with that of the auditor.

Licenses, Fines, Etc. — Besides the general tax upon property, taxes are collected in incorporated towns and cities upon houses and lots, for the improvement of adjoining streets. Other taxes are collected under the name of licenses for certain kinds of business, such as the selling of intoxicating drinks. The government also receives some money from fines and forfeitures. All of these sources of income amount to but little in comparison with the general tax upon property.

Exemptions. — In the general property tax some forms of property are exempted from taxation. The assessor makes a list of the taxable property only. States generally exempt a portion of the personal property, including the tools and utensils of laborers,

Churches, parsonages, institutions of learning, and various charitable institutions are in most states exempt, on the ground of their advantage to the public. As a matter of experience, the greater part of the tax is collected from real estate.

Reasons for not taxing Notes and Mortgages. — Many persons who have given the subject of taxation most careful and conscientious study, have come to the conclusion that the government ought to exempt from taxation all money, notes, mortgages, bonds, and other forms of invisible property. Assessors do not find the invisible property. As a matter of fact only a small part is taxed. It is manifestly unjust to tax a part and allow a part to go free. The loaning of money is done chiefly in towns and cities. Taxes in cities are generally high, sometimes four or five per cent. The man who conceals his money from the assessor is in competition with the honest man, who reports all his property. The dishonest money loaner has then an advantage of four or five per cent over all others. There is here a bribe of four or five per cent per annum upon their capital for all honest money loaners to become dishonest, or to sell out their business to the dishonest. The government, by the attempt to tax, drives the business into the hands of those who conceal their property from the assessor. The government gets no tax; the dishonest money loaner gets as high a rate of interest as if paying the high taxes, while the borrower pays a wholly gratuitous bounty to the dishonest loaner. Now, if the government would simply cease trying to tax moneys and credits, the honest lender and the dishonest one would

be placed on an equality; interest would be lower; the borrower could afford to build more houses and shops, and, instead of rewarding dishonesty by a high rate of interest, the borrower could pay a tax upon the visible property which a low rate of interest had enabled him to create.

Bonds should not be taxed. — It is often economical, and it is sometimes necessary, for the government to have the use of more money than can be collected at once by taxation. An expensive building is to be erected, or a war is to be waged. In such cases the government borrows money, and issues its notes, or bonds, promising to pay at some time in the future. The government has no more power in the borrowing of money than an individual. In some respects the government resembles an insolvent borrower. Some men, who cannot be compelled to pay their debts, can, nevertheless, borrow money on pretty favorable terms, because men believe that they will pay. The government can often succeed in borrowing on favorable terms, because men believe that it will pay. They know that, in most cases, it cannot be forced to pay. For a government to tax its own notes or bonds would be just as irrational as it would be for an insolvent borrower to publish in advance that he would only pay a part of the interest agreed upon in his contract. Men would either not loan to such a borrower or they would make the interest high enough to cover all risks of non-payment. If a government were expected to tax its bonds three per cent, the creditor would add three per cent to his rate of interest, and there would be no relief to

other taxpayers. But the government, in order to borrow on most favorable terms, is often compelled to place its notes in the hands of its creditors, and permit them to be bought and sold like merchandise. The attempt of the government to tax these bonds drives them into the hands of those who avoid the tax. The government gets no tax, and the taxpayer is compelled to pay a high rate of interest, which benefits no one save the bond-holder. It is clearly the best policy for the people to have it thoroughly understood that no bond issued by federal government, state, county, city, town, township, or school district, shall, under any circumstances, be taxed by any authority in the nation. In this way the bond-holder may be compelled, through a low rate of interest, to share the burdens of government, and the taxpayer is relieved.

Federal Taxation. — The Constitution of the United States forbids the states to derive a revenue from a duty upon goods imported or exported.[1] The states are, for the most part, restricted to the method of supporting government by a direct tax on property. A direct property tax can be levied by the federal government also, under the Constitution. But its collection would require such a vast army of officers, some of them in every township in the land, that the system is not likely ever to be adopted. Hence the federal government is practically compelled to adopt the policy of securing a tax in some other way.

Revenue from Land-Sales. — The federal government has at times received a large revenue from the sale of public lands. In the year 1836 the income from this

[1] Art. I. sec. 10, cl. 2.

source was nearly equal to that from all other sources combined. At the present time it is comparatively insignificant. Its collection belongs to the Department of the Interior. Land offices are opened in the vicinity of lands offered for sale, and the money received in payment is accounted for to the Treasury of the United States.

Postage. — The Post-Office Department is supported chiefly by the receipts for postage. It is the policy of the government to collect no more revenue in this Department than is necessary for its support. There has usually been a deficiency, to be made up by an appropriation from other sources.

Internal Revenue. — For ten years following 1792, for a few years after 1814, and ever since 1863, a considerable reveuue has been derived from a tax on commodities produced in this country. For a few years after the Civil War it brought in more than half the revenue, and it still yields about one-third. The commodities selected for an internal revenue tax have often been such as were deemed injurious to the people, and one object of the tax has been to discourage their production and use. The articles from which the greater part of the internal revenue is now derived are tobacco, beer, and distilled liquors.

Collection Districts. — In the Treasury Department there is a Commissioner of Internal Revenue to supervise the collection of this tax. The country is divided into more than a hundred collection districts, in each of which are appointed collectors and assistants, whose duty it is to carry into effect the revenue laws.

Customs. — By far the most important source of

revenue to the federal government has been customs, or duties upon imported goods. For the entire period of our history more has been collected from this source than from all others. The commodities upon which duties are imposed are numerous. More than twenty pages of the Revised Statutes are occupied with the tariff lists. While the commodities on the list are numbered by thousands, the greater part of the revenue is derived from a few. From some articles there is no revenue, because the tax is so high that people will not be at the expense of importing them.

Protective and Revenue Tariffs. — One object of the tariff has been to encourage home production. The foreign commodity is taxed for the purpose of preventing its sale in America in equal competition with home products. A duty for this purpose is called a Protective Tariff. A tax on imports, maintained solely to raise revenue for the support of the government, is called a Revenue Tariff. A pure revenue tariff may be collected from two classes of commodities: first, those which are not produced in this country, as tea, coffee, and spices; second, commodities on which an equal home tax is laid when produced here. For instance, under such a tariff a duty upon tobacco would be allowable precisely equal to the internal revenue tax, for then all tobacco, whether of home or foreign production, would pay an equal tax, and share equally in the advantages of the market.

The collection of duties upon imported goods is also a part of the business of the Treasury Department. The law establishes ports of entry, that is, harbors where ships are authorized to unload; and collection districts,

more than a hundred in number, with collectors in each port and district.

The United States and Direct Taxes. — The peculiar relation which exists between the states and the federal government is well illustrated in the matter of direct taxation. The Constitution confers upon Congress full power of taxation. The single limitation is a prohibition to levy an export duty. But Congress has not often attempted to levy a direct tax. If the states held the same relation to the federal government that a county holds to a state, the method of direct taxation would be the simplest and the easiest way to secure a revenue. Congress would simply determine the amount to be raised, and apportion to each state its proper share according to population. If the legislature in any state should refuse to levy and collect the tax, the members would be arraigned before a federal court and compelled to do their duty or be imprisoned for contempt.

In 1861 Congress did vote a direct tax to be collected in the several states. The law provided for the collection in one of two ways. First, if a state would assume the burden of collecting the tax and paying it into the United States Treasury, fifteen per cent of the amount should be given to the state. Second, in case the state did not do this, then federal officers should collect it. The federal government has not the use of counties and townships to assist in the collection of taxes. To do this, it must appoint its own officers. The trouble and expense of collecting was such that the tax was continued only one year. From 1861 to 1872 the federal government collected a tax on incomes.

Enforced Action. — One of the counties of a Western state refused to levy a tax for the payment of its debts. The county board, whose business it was to levy the tax, was ordered by a court to levy the necessary tax, or incur the penalty of imprisonment for contempt of court. They obeyed the order. Many things may be left to the voluntary action of counties and townships, but the payment of taxes is not one of them. The Continental Congress depended upon the voluntary action of the states to collect the taxes apportioned to each, and the taxes were not collected. Counties levy taxes promptly, because they know the power of the state to compel action.

CHAPTER XII.

TOWNS AND CITIES.

Meaning of Terms. — Outside of New England, the word *town* is usually applied to almost any group of dwellings which are situated near together. Often a small town is simply a part of the township, has no fixed limits and no powers of government. Village commonly means a small collection of dwellings; though in some parts of New England the term is applied to large business and manufacturing centres, embracing many thousands of people. Some states provide for incorporating villages. When this is done, definite limits

are fixed to the village, and within them there is established a new local government. Other states provide for the incorporation of towns, where the word is used in the sense of village. An incorporated village or an incorporated town may still be a part of the township and subject to township government; but as a corporation it has powers not possessed by the township. The word *city* everywhere is used to designate government with special corporate powers. In some of the states a population of one thousand may be organized into a city, while in others a population of ten thousand is required.

Municipal Constitutions. — The frame of government for incorporated towns and cities is formed by the state legislature. It is commonly uniform for the smaller municipalities. In some of the states all the cities are classified according to population, and are required to conform to a general plan for city government. The state constitution in some cases prohibits special laws for the organization of a city. Other state legislatures pursue the policy of granting special charters to cities, and making laws for them separately.

City Officers. — The characteristic officers of a city are: 1. A legislative body, whose members are called aldermen, councilmen, etc. 2. A mayor, who is the chief executive officer. 3. City or police courts. There are besides, an organized police, a treasurer, a solicitor, street commissioners, and in large cities many minor officials.

The Work of City Governments. — In matters concerning education, highways, the care of the poor, taxation, and holding elections, cities sometimes do for their

inhabitants what elsewhere is done by the school district, the township, and the county. In respect to all these labors the dense population of cities renders necessary peculiar methods of governmental administration. Town and city schools differ in organization from the country schools. Highways in cities must be paved; provision must be made for foot passengers; streets must be swept and cleaned. The burden of pauper relief is much greater in cities than in the country. In addition to homes for paupers, city governments maintain hospitals for the sick, and they inspect and regulate tenement houses. Cities share with counties and townships the general burden of taxation, and they have in addition special powers of taxation. The forms of taxation peculiar to cities are: 1. The expense for pavements and sidewalks may be met by assessing the cost upon adjoining lots. 2. A large revenue is derived from license fees. 3. The companies who control the city monopolies, *i.e.* gas companies, water companies, and street-car companies, sometimes pay the city for their privileges. 4. Some cities derive a revenue by owning and operating the city monopolies.

Independent Powers of Cities. — Counties and townships in the greater part of the states have few independent powers; they are chiefly agencies for the administration of the laws of the state. Cities are also administrative agents of the state government; but their chief importance arises from the large number of powers which they may exercise to meet their own peculiar needs. Besides what is indicated in the preceding paragraph, cities have power to prescribe the sort of materials which may be used for buildings, and

to maintain agencies for preventing and extinguishing fires. They do many things to protect the citizens from disease, especially from contagious diseases. They make many laws for the preservation of order.

CHAPTER XIII.

THE CHOOSING OF PUBLIC SERVANTS.

Selecting Teachers. — A school teacher is usually employed by a school board. There have been cases where the teacher has been elected by a popular vote; but this is not a satisfactory method. It is customary in popular elections to choose only those who reside within the district. Many school districts do not contain teachers, and the district is obliged to find a teacher elsewhere. It is better that there should be a class of persons who make teaching their business, that they may be specially fitted for their work. Teachers would not be encouraged to fit themselves for their occupation if their services were limited to the district where they reside.

Skilled Officials selected by Boards or Individuals. — When a city is in need of a superintendent to manage its schools, the school board is authorized to seek out and employ one. A wise choice may require confidential information, and so the responsibility of choosing is left to a few. A county needs a skilled superintendent for the country schools, and it is better to have a

county board employ such an officer. The plan of choosing the county superintendent by a popular election limits each county to candidates residing within its own borders. When a county superintendent, after becoming skilled in his work, is, by a popular election, removed from office, the entire state is deprived of his services. If the state should make it the duty of a county board to employ the county superintendent, the most skilful would be most sure of employment. If they were not employed by one county, they would be by another. If a county needs a court-house, it does not select a builder by a popular election, but commits the selection to a responsible board. When counties select a skilled engineer to superintend road work, it is done by the county board, and not by a popular election. From these examples we may derive the general statement that where the government is in need of professional skill in its service, it is best to secure this through some individual officer or appointing board.

Elections. — In popular governments there is a variety of usage as to which offices shall be filled by appointment and which by popular election. All officers derive their authority directly or indirectly from a popular election. In most of the states the chief state officers, the local officers of the school districts, townships, towns, cities, and counties, are elected by the people. In the federal government, the President and the Vice-President are chosen by electors elected by popular vote. Representatives are elected by a vote of the people, and senators are elected by the state legislatures. The other offices in the federal government are filled by appointment.

Voting Precincts. — The holding of elections is an important part of the business of government. A voting precinct should be small, as it is not convenient to travel many miles for the purpose of voting. A township is a convenient voting precinct for rural districts. Small towns and cities are voting precincts. Large cities are subdivided for voting purposes. Some of the local governments have elections for local officers on a different day from that of the general election. In these cases the officers who receive the votes count them in the presence of all who wish to witness the process, and declare the result.

Canvassing the Votes. — The following method is used in many states: At the general elections of county, state, and federal officers, there are local officers whose duty it is to hold the election in each precinct in the state. The laws of the state prescribe the manner of holding these elections. The officers are required to keep the polls open during certain hours, to receive the votes of all who have a right to vote, and to exclude others. After the polls are closed, the officers count the votes, and make a list of all the persons who receive votes, and of the number which they receive. Those who receive the greatest number of votes for offices within the precinct are declared elected. In the case of the more general offices of the county, the state, and the nation, the lists are sent to a county board, whose duty it is to meet at a time specified by law, and canvass the votes. The county board declares the result of the vote for county officers, and sends the lists of votes for the more general officers to the state board of canvassers. The state board makes a canvass of the vote

for all the remaining officers, and declares the result. In some states the General Assembly canvasses the votes for the governor and the lieutenant-governor.

Election of President and Vice-President. — The people do not vote directly for the President of the United States, but vote instead for presidential electors. According to the Constitution of the United States, each state is required to choose as many electors as there are senators and representatives from the state. These electors are chosen at a general election held in November in each fourth year. The votes are canvassed in the same way as are those for other state officers. The electors chosen are required to meet in their respective states on the second Monday in January, and vote by ballot for President of the United States, and by a distinct ballot for Vice-President. Separate lists are prepared of the vote for each of the two offices, and three copies are made. One is deposited with the clerk of the nearest district court of the United States, one is sent by messenger to the President of the Senate, and the third is sent to him by mail. On the second Wednesday in February, the President of the Senate, in the presence of both houses of Congress, breaks the seals and counts the votes. Of the candidates for each office, the one who receives the greatest number of votes, if it be a majority of the whole, is declared elected. If no candidate for the presidency receives a majority, the House of Representatives proceeds to choose a President from the three candidates receiving the greatest number of votes. If a Vice-President is not chosen by vote of the electors, the Senate proceeds to choose a

Vice-President from the two candidates receiving the greatest number of votes.[1]

Disputed Election. — It has happened several times that two sets of electors have claimed to be elected in a single state, and each set has sent to the President of the Senate a list of its votes. In 1876 duplicate lists were sent from three Southern states. The candidates were S. J. Tilden and R. B. Hayes. If all the disputed lists were counted in favor of the candidacy of Mr. Hayes it would result in electing him President by a majority of one. Any other contingency would result in the election of Mr. Tilden. The state of feeling was such as to threaten serious trouble; and Congress averted the danger by creating a special board, consisting of five representatives, five senators, and five justices of the Supreme Court, to decide in advance which of the disputed lists should be counted. To avoid such a danger in the future a recent act of Congress authorizes the legislature of each state to establish by law a special court to determine cases of disputed elections. This, at first view, seems to be a case where Congress is making use of the states to transact a part of its business. But the law does not in express terms lay a command upon the states, as would a state legislature in like case in dealing with a county, but the law permits the state to establish such a court; and it further gives notice that if any state does not choose to establish such a court, and decide by its own court who shall be its lawful electors, the vote of the state shall not be counted in the choice of a President. This, while leaving the states nominally free, makes it practi-

[1] Art. II. sec. 1, and Amendment 12.

cally certain that every state will decide all cases of contest in the choice of presidential electors.

The Ballot. — When members of Parliament were first elected in England, the choice of the voter was manifested by the voice, by show of hands or other public sign. Voting for members of Parliament continued to be by voice till 1871, when the secret ballot was introduced. Voting by ballot was provided for in some of the colonial charters, and in some of the colonies and states it has always prevailed. In other states, especially in the South, the ballot was not used until the Civil War. Now its use is required by every state constitution except two. The object of the ballot is to secure secrecy, that the voter may be free to express his real choice without fear or intimidation.

The Australian System. — The ballot does not secure entire secrecy. Tickets are printed and distributed by those interested in the election. The appearance of the paper in the hands of the voter indicates his choice. A briber may furnish the voter with a ticket, and watch him till he deposits it in the box. A system of voting originating in Australia, adopted in England and Canada, and now enacted in several states of the Union, is fitted to remedy these defects. The following are the chief provisions of the system: 1. The government prints all the tickets, and puts on each ticket the names of all the candidates. To enable the officers to do this the law provides that the political parties and the bodies of citizens who wish to nominate candidates shall do so in due time and notify the officers. 2. The voter is furnished by an officer at the voting place, with the ticket which he is to place in the box.

3. Before depositing the ticket the voter takes his place at a desk provided for the purpose, where his hands are concealed from view, and there makes a cross opposite the names of the candidates for whom he wishes to vote. The ticket is then folded and put into the ballot box. There is a number of minor provisions, such as guarding the polls against intruders, and requiring a sufficient number of voting places to prevent the necessity of haste. An officer is commissioned to assist the blind and the illiterate in marking the ballot.

Constitutional Provisions. — Every state constitution sets forth who have a right to vote. The common formula is, "All male citizens of the United States over twenty-one years of age," with certain limitations. There are requirements as to residence. Soldiers quartered in a state may not vote. Some constitutions provide that students do not by attending school gain a residence entitling them to vote. Idiots, insane persons, and persons convicted of crime may not vote. Bribery at an election disqualifies in some states, and participation in a duel, in some. Massachusetts insists upon ability to read the Constitution in the English language, and the Florida constitution makes it the duty of the legislature to enact an educational test.

The United States Constitution. — The regulation of the elective franchise is not among the powers conferred upon Congress; it is a power reserved to the states or to the people. The Constitution makes the electors for representatives to Congress the same as those who vote for "the most numerous branch of the state legislature."[1] The time, place and manner of hold-

[1] Art. I. sec. 2, cl. 1.

ing elections for senators and representatives is to be prescribed by the legislature of each state; but "Congress may at any time by law make or alter such regulations, except as to the place of choosing senators."[1] This clause gives to Congress the power to take full control of the election of its own members, but thus far the power has not been exercised. The Fifteenth Amendment removes from the states the power to deprive a person of the elective franchise on account of race, color, or previous condition of servitude. With this limitation the regulation of the franchise is still in the hands of the state, which may withhold it for other reasons. When the amendment was adopted many state constitutions restricted the franchise to "white" male citizens. These restrictions of course at once became void.

[1] Art. I. sec. 4.

PART III.

THE ADMINISTRATION OF JUSTICE.

CHAPTER XIV.

ANCIENT USAGES.

A GOVERNMENT may exist and do nothing for the education of youth; it may entirely neglect to provide public highways; it may do nothing for the poor and other unfortunate classes. All these things may be left to other agencies.

What a Government must do. — But there is one duty which the government cannot leave to other agencies. It must administer justice; it must punish the wrong-doer. If the government leaves to another agency the protection of life and property and the punishment of wrong-doers, then that other agency becomes the government. We call that a state of anarchy in which every man is permitted to do what is right in his own eyes, and in which there is no recognized authority to preserve order and administer justice. There are many things which a government may do, and which a good government will do, besides administering justice, but so much it must do. There are states of society in which individuals avenge their own wrongs and main-

tain their own rights; but in so far as this condition exists, it is a state of barbarism; civil government does not exist under such conditions.

Union of Departments. — By a reference to previous chapters it will be observed that in past times legislative, executive, and judicial powers have often been in the hands of the same officers. In England the three sorts of business were united in the town-meeting of the ancient township, in the court of the hundred and in the county court. The king and his council were at the same time law-makers, law-executors, and the highest judicial body of the realm. The House of Lords is still the court of last appeal on some matters of English law. The separation of the judiciary from the other departments is most complete in America.

Judicial Business in Ancient Townships, Hundreds, and Counties. — One part of the business of the town-meeting among the early English was to administer justice between man and man. In this work they followed the good customs of old. In difficult cases the old men were called upon to state the custom as they remembered it, and the entire community gave voice in the decision. When the group of towns in a given locality united in a hundred court, the age and wisdom of a larger community were brought to bear on the administration of justice. To the hundred court came the chief lords of the hundred, and a reeve and four best men to represent each township. These all joined in the administration of justice. The court of the shire, or county, followed the model of the hundred court. To the shire court came the chief lords of the shire, and representatives from hundreds, boroughs, and

townships. In this court was to be found the united wisdom of the county. To it were taken cases at law which had proved too difficult for the hundred court.

Common Law. — In all these courts, as well as in the higher courts held by the king's justices, the aim was to follow the customs of the realm in the administration of justice. When a court decided a case, it was equivalent to a declaration that this was the custom applied to the case in hand. The decisions of courts, therefore, were of great importance in determining the customs and laws which formed the basis of English justice. From this source we have the Common Law of England, which came to America with our English ancestors.

The townships, the hundred, and the county courts grew out of the habits and customs of the people. With the growth of the power of kings and lords, the king and his council came to exercise important judicial powers; while local lords held courts of their own, and often gained control of the local popular courts.

The King's Justices. — The kings were disposed to increase their power by extending their judicial functions. This was often quite agreeable to the people, because they had already fallen into the hands of lords and local tyrants. A justice from the king's council, empowered to hold a court for the people, was hailed by them as a deliverance from these local tyrants. The king and his council decided cases brought before them from the lower courts; and justices from the king's court went through the shires of England, holding courts and administering justice in the king's name. England had come to be occupied by a mixed popula-

tion; and there was naturally a great diversity in the local customs of the people's courts. The king's judges had excellent opportunity to learn all the good customs of the realm; and the king and his council could embody these good customs in general orders or laws. In this way the courts and laws were reduced to a uniform system throughout England. The king came to be looked upon as the source of all law, because he made known the laws, and the law was administered in his name; yet, as a matter of fact, most that was excellent in the laws of England came from the good customs of the people, developed in their local courts. A clause in Magna Charta requires the king's justice to hold court four times each year in each shire. These courts gradually absorbed much of the judicial business formerly done by the county courts.

Justices of the Peace. — Canute, the Danish king who began to rule in 1016, required all citizens to take an oath that they would not be thieves, or robbers, or receivers of such, and that they would fulfil their duty of pursuing the thief when the *hue and cry*[1] was raised.

[1] From very early times in English history it was made the duty of every citizen to pursue and arrest persons whom he saw in the act of committing a crime. The English government held the people of the locality in which the crime was committed responsible for the crime. If the criminal escaped, the town or the hundred had to pay the penalty affixed to his crime. One method of taking a criminal was by "*hue and cry*." This custom began in the earliest times. When a crime was committed, it was the duty of any citizen who knew of it, and knew, or thought he knew, who committed it, to raise the *hue and cry* against the criminal. This was done by crying aloud, or blowing a horn, and giving chase to the supposed criminal. Any citizen who heard the *hue and cry* and did not join in the pursuit, was liable to be punished. In later times citizens were required to use horses in the chase.

This oath was exacted by other kings, and in 1194 Richard I. appointed knights in each shire, to enforce the oath and preserve the peace. These knights were called *Conservators of the Peace.* Their duties were at first police rather than judicial; but in course of time they came to exercise judicial functions. By a law of Edward III., 1327–1377, these *conservators of the peace* were empowered to hear and determine felonies. From this time their duties were largely judicial and their name was changed to Justices of the Peace.

Quarter Sessions. — Justices of the Peace appointed by the king gradually assumed both the judicial and the administrative business of the more popular court of the hundred. All the justices of the shire were called together four times each year, and organized as a Court of Quarter Sessions. This court displaced the older representative county court. The Court of Quarter Sessions was not only an important judicial body for the trial of cases at law, but it was a body for the transaction of all sorts of county business. This, as stated in a former chapter, was the form of county government existing in England when America was settled, and was transferred to this country. One or more justices held petty sessions in the hundreds, and transacted business as the lowest court in the land. By these various changes, gentlemen holding office for life gained control of counties and hundreds; the jury was all that remained of the ancient people's courts.

CHAPTER XV.

THE ORIGIN OF JURIES.

The Jury and the Town-Meeting.—There were some customs of the ancient English town-meeting which are believed to have a connection with the origin of the jury. An injured person would stand up before the meeting and state in a formal manner a charge against his supposed injurer. The accused person would deny in a formal way the truth of the charge. Each party would seek to establish the truth of his statement, by calling upon his supporters to join hands and swear to the truth of his word. The one who could get twelve men to swear with him would usually carry the voice of the meeting and win his case. The twelve who swore together to the same thing were not jurors. Yet the custom is supposed to have some connection with the origin of juries.

The Jury and the Normans. — When William the Conqueror and his Norman army came into England, (1066), and finally settled down to rule the land, the king was in great need of definite and accurate information as to the condition of his kingdom. He wanted to know how many estates there were in the realm; how many people there were on each estate; and what was the rank and condition of each person; how much property there was; and what were the customary services and rents. To secure information on these points, he ordered a general survey and census of the realm. One method employed for gaining information was to

require twelve men of the neighborhood to give the facts under oath. This method of gaining information, by twelve sworn witnesses of the neighborhood, was continued under other kings.

Closely connected with the usage of gaining information through the medium of twelve witnesses, there grew up, in the hundred and the county courts, the practice of deciding disputes by the same agency. The sheriff called together twelve men of the neighborhood to decide by oath between rival claimants to an estate. In like manner, men were presented to the court for trial by the oath of twelve men of the neighborhood.

Trial by Ordeal. — When a person was accused before the court by the oath of twelve neighbors, it was common to test the truth or falsity of the accusation by a method of trial called the *ordeal*. Of this there were various forms. Sometimes the accused person was thrown into deep water; and if he sank, he was held to be innocent. Or he was blindfolded, and compelled to walk over a space strewn with hot irons; and if he was not burnt, he was held to be innocent. Or his hands were thrust into hot water; and if he was not scalded, he was innocent.

The ordeal was looked upon as a method of determining the facts by divine agency, and was usually administered under the guidance of church officers; but in 1215 it was condemned by the church.

Trial by Battle. — Both the English and the Normans were accustomed to trials by ordeal; but among the English there was also the method of deciding cases by twelve sworn witnesses. It was when other methods failed that the ordeal was ordered. The Normans had

a method of trial which was new to the English, and which they detested. This was trial by battle. Two men would fight in the presence of the court; and the case was decided by the result of the fight. Two stories, preserved to us from this period, give a vivid picture of the resistance of the English to the Norman method: —

"At Leicester the trial by compurgation,[1] the rough predecessor of trial by jury, had been abolished by the earls in favor of trial by battle. The aim of the burgesses was to regain their old justice, and in this a touching incident at last made them successful. It chanced that two kinsmen, Nicholas, the son of Acon, and Geoffrey, the son of Nicholas, waged a duel about a certain piece of land, concerning which a dispute had arisen between them; and they fought from the first to the ninth hour, each conquering by turns. Then one of them, fleeing from the other till he came to a certain little pit, as he stood on the brink of the pit, and was about to fall therein, his kinsman said to him, 'Take care of the pit; turn back, lest thou shouldst fall into it.' Thereat so much clamor and noise was made by the bystanders, and those who were sitting around, that the Earl heard these clamors as far off as the castle, and he enquired of some how it was there was such a clamor; and answer was made to him that two kinsmen were fighting about a certain piece of ground, and that one had fled till he reached a certain little pit, and that as he stood over the pit and was about to fall into it, the other warned him. Then the townsmen, being moved with pity, made a covenant with the Earl that

[1] By witnesses or jurors.

they should give him threepence yearly for each house on High Street that had a gable, on condition that he should grant to them that twenty-four jurors, who were in Leicester from ancient times, should from that time forward discuss and decide all pleas they might have among themselves." — *Green's History of the English People.*

The other incident is from the history of St. Edmundsbury, and gives an insight into the way in which the English method of trial by compurgation, preserved or regained in English towns, was extended to the surrounding country. The townsmen of St. Edmundsbury were living in the enjoyment of the right of trial by compurgation, while just outside the walls of the town the Norman method of trial by battle prevailed. A man by the name of Kebel was tried by battle, and the battle went against him. He was accordingly condemned and hanged just outside the walls of the town. It seems that Kebel's neighbors knew that he was innocent, and the townsmen said, "Had Kebel been a dweller within the borough, he would have got his acquittal from the oaths of his neighbors, as our liberty is." The monks who were lords of the estate were thereupon moved to extend the same liberties to their tenants.

Grand and Petit Juries. — As trial by battle was discontinued, and the ordeal was condemned by the church, the custom became universal of forming a jury of twelve, to decide upon the guilt or innocence of one presented for trial. This body was called a Petit Jury in distinction from the larger body, which made the accusation or indictment, and received the name

of Grand Jury. The grand jury consisted at first of twenty-four, but afterwards of twenty-three members, of whom twelve were required to make an indictment.

Changes in the Jury. — The grand jury has been little changed, but the petit jury has been greatly changed. At first the twelve were chosen because they were supposed to be acquainted with the accused and the evidence, and they decided the case upon their own knowledge. If the original twelve were not agreed, others were added until twelve were found who would pronounce in favor of the guilt or the innocence of the accused. Afterwards, in the time of Edward III., 1327, witnesses were added to the jury, not to unite with them in the verdict, but to give evidence. About a hundreds years later, the witnesses were no longer added to the jury, but were examined and cross-examined in open court. Jurymen continued to use their own knowledge of the facts in making up their minds. It was not until three hundred years later still that jurors were required to decide, not upon their own knowledge, but wholly upon evidence given in open court.

Jurymen as Representatives. — In the old popular courts of the hundred and shire the representatives spoke for the entire community. To be condemned by the county court was to be condemned by the county. The jury came to be a means by which the voice of the court was expressed. Juries continued to represent the community after the county court was reorganized and all other representatives had been displaced by justices of the peace. In course of time, grand juries were composed chiefly of country gentlemen, and the trial, or petit jury, was left to the common freemen. Probably

a large part of the devotion of Englishmen to trial by jury is due to the fact that, for centuries, the jury furnished the only means by which the ordinary citizen could share in important governmental business. The jury system was transplanted to America, and is still maintained with some modifications. Some of the states have abolished the grand jury; in some a grand jury may be composed of only five persons. In some of the states juries of a less number than twelve are authorized in some of the lower courts; and in some the jury is not required to be unanimous in order to form a verdict.

CHAPTER XVI.

MINISTERIAL OFFICERS.

Reeves. — Of the officers who serve our courts and execute their orders, the most familiar are the constable and the sheriff. These, like the courts themselves, have come down to us from the distant past. In the ancient English township, the headman was called the *tûn-gerefa*, or *town reeve.* Where townships had developed into boroughs, the headman was called the ***head borough***, or *borough reeve.* In the hundred, the headman was the hundred reeve. In the county or shire court, the chief man was the shire reeve, which title was early shortened into sheriff. These officers in early times had a variety of duties.

Constable. — With the Norman lords and kings from France, came into England the name *constable*, which

was destined to fill an important place in English and American history. The name is from *comes stabuli*, companion of the stable, and may once have meant a hostler; but in the Norman period of English history it had the more dignified meaning of a commander of horse. The Lord High Constable of England was the chief military officer of the realm. The lords of the castles had constables as commanders of their horse. In striving to perfect their military systems, the kings appointed constables in the hundreds, to see that the laws for arming and training the militia were carried into effect. Constables were also chosen in the townships, and took the place of the reeves in the township and the hundred. The constable of the hundred was called the *high constable*, and that in the township the *petty constable*. With the decline of the hundred the high constable disappeared, and the petty constable remained as a local police and ministerial officer.

Sheriff and Coroner. — The sheriff, as the headman of the county, had a great variety of responsible duties, some of which were judicial. In the year 1194, a law was passed directing the counties to elect coroners to hold pleas, or suits, in the name of the king. The coroner seems to have been designed as a sort of check upon the sheriff. The powers of both of these officers have become greatly restricted. The chief remaining duty of the coroner is to hold inquests over the bodies of persons who have died by violence or under suspicious circumstances. There is still a remnant of the old functions connecting the coroner with the sheriff, in the provisions made by statute that the coroner shall

serve processes on the sheriff, and act as sheriff in case of vacancy in that office.

Marshal. — The word *marshal*, like the word *constable*, was introduced by the French; and like constable, it was also first applied to one having the care of horses. The Earl Marshal of England stood next in rank to the Lord High Constable. In the first counties organized in Massachusetts, New York, and Maryland, the term marshal was used for a time in the place of sheriff. It is now applied to the ministerial officer for the courts of the federal government, and the chief police officer in many cities.

Judicial and Ministerial Functions. — The sheriffs, constables, and bailiffs, being chief officers of a court, or of a body of citizens exercising judicial functions, came themselves to hold courts, and to exercise judicial powers. There is a clause in Magna Charta, given by King John in 1215, forbidding sheriffs, coroners, constables, and bailiffs of the king to hold pleas of the king, or to try cases at law. The judicial business was passing more and more into the hands of the king's justices. At the same time, the head officers in the older local assemblies, or people's courts, became known chiefly as servants of the new courts. They served notices, subpœnaed witnesses, arrested criminals, empanelled juries, seized and sold property, as they were ordered by the court. These are called ministerial officers, because it is their chief business to attend upon the court and obey its orders.

CHAPTER XVII.

COLONIAL COURTS.

The English System. — When Englishmen founded colonies in America, the courts with which they were familiar were: 1. The Justice of the Peace in Petty Session, having charge of minor cases, civil and criminal. 2. The Justices of the Peace in Quarter Sessions, having charge of appeals from the justices in petty sessions, and more important cases. 3. Assize Courts, held by justices sent out from the high courts of the kingdom, which were the courts for the trial of the cases of chief importance, civil and criminal. 4. The High Courts, divided into various separate parts, which were for the hearing of appeals, and for the trial of cases involving important matters of state. 5. A portion of judicial business was still transacted in the House of Lords and in the Privy Council, the two parts of the ancient King's Council. Many features of this system were transferred to America.

In Massachusetts. — Under the first charter, the judicial business in the colony of Massachusetts was in the hands of the governor and his council, of magistrates whom they appointed, and of local magistrates elected in the towns. The eighteen assistants who made up the governor's council held court for the trial of small cases in the towns where they chanced to reside. In towns not thus provided for, "commissioners of small causes" were chosen. The governor and assistants held a court once a month, and four great

courts were held during the year, for the hearing of important cases. As population increased, counties were organized for the holding of courts of the intermediate grade. Under the charter given by William III., 1691, county courts of the English sort were organized. Justices of the peace in the different counties were appointed by the governor. These, in their various towns, held petty sessions for small cases, and four times each year, in quarter sessions, they attended to the more important judicial business of the county. The governor and his council were still the highest court in the colony in probate matters. To attend to other judicial business, formerly done by the governor and his council, a superior court was organized, composed of one chief justice and four associates, who were appointed by the governor.

In Other Colonies. — The judicial system of Massachusetts, as it was organized under the new charter, may be taken as a type of the system of the colonies generally. The governor and his council or judges appointed by the governor were the highest court in each colony. Justices of the peace, in petty sessions and in quarter sessions, formed two lower courts. Courts of an intermediate grade, between the county court of quarter sessions and the supreme court of the colony, arose through the custom of having judges from the governor's council or from the high court hold sessions in the counties.

Separation of the Judiciary. — The second charter of Massachusetts indicates a tendency to separate judicial from legislative and executive business. The same tendency was promoted by the appointing of circuit

judges to hold courts in the counties. In the county court where judicial and executive work was most thoroughly united, a separation was effected by the election of county commissioners to attend to county executive business. The idea of complete separation was thoroughly developed before the Revolutionary War.

Choosing of Judges. — During the colonial period judges were appointed by the governor in all the colonies except Rhode Island and Connecticut, where they were chosen by the legislature. "When, in and after 1776, the states formed their first constitutions, four states, beside the two just named, vested the appointment in the legislature; five gave it to the governor, with the consent of the council; Delaware gave it to the legislature and the president (governor) in joint ballot, while Georgia alone entrusted the election to the people."[1] A majority of the states now choose all judicial officers by popular election.

CHAPTER XVIII.

STATE COURTS.

Three Grades of Courts. — The system of courts, as finally established in all the states, has at least three grades. 1. In the courts of the lowest grade the judicial business is in the hands of justices of the peace in petty sessions, and in those of the lower police courts

[1] Bryce: *The American Commonwealth.*

of towns and cities. 2. In some of the states there are still courts of quarter sessions; but in most states this court has been replaced by a court commonly called a District or Circuit Court. Where the court of quarter sessions is retained, there are four grades in the system. 3. There is in each state a Supreme Court, or court of last appeal, consisting of a chief justice and one or more associate justices.

It is not possible by a general description to give a correct view of the judicial systems of all the states. In every state the justice of the peace is the lowest court; but in some states his powers are more limited than in others. In nearly every state the highest court of appeal is called the Supreme Court, but in New York it is called the Court of Appeals. The system of courts intermediate between the justice of the peace and the supreme court, varies greatly in the different states. The simplest is where just one court, called either a circuit or a district court, tries all sorts of cases. It is a criminal, a civil, a probate court and a court of equity. Departures from this simplest form arise: 1. From establishing separate courts for the different sorts of business; in that case there may be three or four courts each with a different name, and all of the same grade. 2. From having two grades of courts for the trial of criminal and civil cases.

Courts of Equity. — A few of the states still maintain separate courts of equity. Equity courts try a class of civil cases where the stricter rules followed in other courts would be inadequate to redress wrongs or to prevent injustice. Relief is granted in this court that could not be given in a court of law. In states

where there are not separate equity courts, ordinary civil courts try such cases, applying to them the rules followed in courts of equity. Equity cases are those arising from partnerships and the administration of trusts, or cases where, on account of mistake, accident or fraud, hardship would be incurred by a close adherence to the strict rules of law.

Tribunals of Arbitration. — Several of the states, some with and some without constitutional requirements, have provided tribunals of arbitration, for citizens who choose to settle their disputes in that way. In some cases a permanent court of arbitration is established; in others a method is adopted by which the parties interested may form a special tribunal for the occasion. In some states tribunals of arbitration are created for the purpose of settling disputes between laborers and their employers. These have not the full power of courts, but their decisions, when filed in a regular court, may be enforced like a decision of the court.

Courts of Record. — The justice of the peace is his own clerk. His court is not a court of record. He is not permitted to try a case which affects the title of real estate. The records in a justice's court are of temporary importance. If the judgment rendered in his court is not soon executed, it becomes of no value, unless the record is transferred, as it may be in some of the states, to a court of record in the county. All the courts of a higher grade than the justice's and police courts are courts of record, and have an officer to keep the records.

Clerk of the Courts. — All the courts of record, ex-

cept the highest court of the state, are connected with the county. They are either county courts or courts held in and for counties. The county provides court-houses, jails, juries, and the safe-keeping of all the records. The officer in charge of the records is called the *county clerk* or clerk of the courts. In some of the states one clerk has charge of all important county records. These are: 1. Of criminal cases, the penalties imposed and the fines collected. 2. Of civil cases, the judgments rendered and executed. 3. Of wills proved, and all matters of administration and guardianship. These are all court records. 4. Of deeds to real estate in the county, including mortgages. 5. As clerk of the board of county commissioners, or the governing board of the county, he has the record of all legislative and administrative county business. 6. He issues marriage certificates and keeps a record of births and deaths.

Variations among the States. — In many states some of the county records are kept by separate officers. The chief are: 1. A secretary, clerk, recorder or auditor who keeps the records of the county board. 2. A recorder of deeds and mortgages, who in some cases has, in addition, the care of the records concerning wills and matters of guardianship. The recording of deeds and of births and deaths in some states is in the hands of a township officer.

Decisions of the Supreme Court. — The chief business of the Supreme Court is to hear appeals from the lower courts on points of law. It reviews the action of the lower court, and may reverse its decision on account of errors in the application of the law. When the supreme court has decided a point in law, the lower

courts in the state are required to follow its decisions. The clerk of the supreme court has duties corresponding to those of the county clerk. He is a state officer, and is either elected by the people, appointed by the court, or appointed by the governor.

Supreme Court Reporter. — The decisions given by lower courts are placed on record. These records are open to the examination of the public, but are not published. The reports of the decisions rendered by the Supreme Court are much more elaborate. The judges give their opinions in writing, and the case is explained and argued at length. Often the judges do not agree. A majority may unite in giving the decision, and a minority may file a dissenting opinion. Besides the clerk, the Supreme Court has another officer, called the reporter, whose duty it is to prepare for publication the decisions of the court. These are published for the benefit of the lower courts, and for the use of attorneys and others interested in the administration of justice.

The courts of one state are not required to follow the rulings of the supreme court of another state; yet these rulings are constantly quoted in the trial of cases, and influence the decisions.

Prosecuting Attorney. — In each county or group of counties forming a judicial district, there is a law officer, called in the various states by different names, some of whose duties are: 1. To present cases to the grand jury for their action, and to draw indictments against those whom the jury decide to indict. 2. To appear on behalf of the state in the trial. 3. To appear on behalf of the county in all suits in which the county or its officers are involved. 4. To give advice

on questions of law to county officers and to justices of the peace in the county.

The Attorney General. — The Attorney General is a state officer whose duties correspond in many respects to those of the law officer of the county. 1. He appears on behalf of the state in all suits in the supreme court in which the state is a party. 2. He is required to give advice on points of law to state officers. 3. In some states he is required to give advice in writing on legal constitutional questions presented to him by the slature. 4. He may be required to prosecute a ıulting treasurer or other officer in charge of state ds. 5. In some states he is prosecuting attorney in trial of capital crimes.

CHAPTER XIX.

FEDERAL COURTS.

Commissioners of the Circuit Courts. — For the trial of cases arising under the Constitution and laws of the United States, the federal government maintains a system of courts similar to those maintained by the several states. The most widely distributed of the judicial officers of the United States are the commissioners of its circuit courts. Each circuit judge is empowered by law to appoint as many discreet persons as he may deem necessary to serve as commissioners. They perform various duties, the chief of which are assisting the district and circuit courts in taking evi-

dence to be used in trials, and arresting and holding for trial persons accused of crime against the United States.

State Officers as Commissioners. — As a justice of the peace may arrest, examine, and commit for trial persons accused of crime against the state, a commissioner of the circuit court of the United States does this work for the federal government. In most parts of the country the violation of a law of the United States is rare; but when it occurs, there is need of an officer at hand, with authority to arrest and hold the offender. A few hours, or a few minutes, may make a great difference in catching a criminal. To meet this occasional want without multiplying officers, a law of the United States provides that in addition to the commissioners of the circuit courts, who have this as a special duty, any judge or magistrate of either the state or the federal government may order the arrest of a person charged with crime against the United States. This may seem to be in conflict with the statement that the state government has nothing to do with the punishment of a crime against the federal government. There is, however, no real conflict between the statements; for a state officer, when he arrests a person for a federal crime, is acting, not as a state officer, but as a federal officer. If a bank is robbed, the suspected person is accused before a justice of the peace, is arrested by his order, examined, and sent to jail. If the United States mail is robbed, the suspected person may be accused before the same officer, and treated in the same way. But in the latter case, the justice is not acting as a local township or county officer; he is acting as a

United States officer; he has for this purpose the powers of a commissioner of the circuit court of the United States. In this service he is responsible to the federal government alone; the state government has no power or control over him.

The Habeas Corpus. — We have, then, two governments, with officers in almost every township in the land, empowered to seize any person and cast him into prison. It is well that this is so. The good order of society requires that violators of law, state or federal, be punished. To do this, the government must have power to seize and hold for trial any person against whom there is evidence of crime. In this way innocent persons are sometimes sent to jail. Any one who deems himself unlawfully imprisoned, may secure the benefit of the writ of *habeas corpus* by applying to either a state or a federal judge for release. If, on examination, he is found to be lawfully held, he is remitted to jail, otherwise he is set free.

District Courts. — The lowest regular court in the federal system is the district court. The commissioner of the circuit court may attend to some judicial business, but cannot try a case. There is a district judge in every state in the Union. Some of the states are divided into two districts, and have two district judges; New York and Texas have three each. There are for the entire Union about sixty judicial districts. The number of district judges is somewhat less, since in a few instances one judge supplies two or more districts. The number may be changed at any time by Congress.

The district court may try any crime against the United States committed within the district, except

those punishable by death. A great variety of civil cases arising in the administration of federal laws may be tried in this court. Associated with every district court there is a district attorney, whose duty it is to appear on behalf of the United States in all suits where the government is a party.

Circuit Courts. — Intermediate between the district court and the Supreme Court of the United States, is the circuit court. The entire Union is divided into nine circuits, for each of which a circuit judge is appointed. He holds a court in each district of his circuit, either alone or with the district judge. The circuit court is often held by a district judge, or by two district judges sitting together. It is the duty also of the nine justices of the Supreme Court to distribute the nine circuits among themselves, and to hold a court in each at least once in two years. In holding this court, the justice may have associated with him the circuit judge or a district judge of the locality. The court which is thus held is an important session of the circuit court. In this court there may be brought together judges from the three federal courts.

The circuit court may try cases appealed from the district court. The greater part of crimes and offences against the United States may be brought for original trial in either the district or the circuit court. Suits arising under patent or copyright laws, and a variety of other cases, are brought for original trial in the circuit court. Appeals from the circuit court are taken to the Supreme Court.

Supreme Court.—The Supreme Court of the United States, as now organized, consists of a chief justice and

eight associate justices. Besides hearing cases of appeal from the lower courts, the Supreme Court has original jurisdiction in all cases affecting foreign ministers and consuls, and those in which a state is party.

CHAPTER XX.

CASES AT LAW.

Three Sorts of Cases. — Legal business is ordinarily classified under three heads: 1. Criminal cases are those whose object is the infliction of some penalty for the violation of law. In a criminal suit one of the parties is always the state, the government, or the people. The state makes the complaint and is called the plaintiff, and the party charged with crime is called the defendant. Petty crimes are tried in the justice's court; more serious crimes are tried in the intermediate courts. 2. Civil cases are such as arise between citizens in the enforcement of contracts, and in securing damages for injuries. The aggrieved party, or the one who begins the suit, is called the plaintiff, and the other is the defendant. 3. Probate business relates to the proving of wills, the settling of the estates of deceased persons, and the guardianship of minors and other persons legally disqualified to manage their own affairs. In the transaction of probate business, contests or suits sometimes arise between the parties, but the greater part of the business involves no contest.

Criminal Processes. — The action of the various

judicial agencies may be made clear by illustrations. We will suppose that a burglary has been committed. Such a case may involve the following legal acts: complaint, warrant, preliminary examination, bail, indictment, arraignment, trial, appeal.

The Complaint. — 1. The first business is to find indications of who committed the crime. So soon as sufficient evidence is discovered, some one who is interested in having the crime punished will go before a justice of the peace in the county, and file a "complaint," or, as it is called in some states, an "information" or "affidavit." This record alleges that A. B. (the supposed criminal) is accused of the crime of burglary, because at a certain time and place he committed certain described acts. In some of the states there is an officer whose duty it is to file all complaints in criminal prosecutions; but in most of the states there is no such officer, and the complaint is made by any citizen who wishes to vindicate the law; usually by the person who is chiefly injured.

The Warrant. — 2. Immediately upon the filing of the complaint, the justice issues a warrant for the arrest of the supposed criminal. The warrant is directed to a ministerial or peace officer in the state. It states that a complaint has been filed alleging that the crime of burglary has been committed at a certain time and place, and charging A. B. therewith. It orders the peace officer immediately to arrest the said A. B. and bring him into court.

Preliminary Examination. — 3. A justice of the peace cannot try a case of burglary. He may hold a preliminary examination. It is the duty of the one

who filed the complaint to furnish evidence of the guilt of the person accused, and the accused may present counter-evidence. If the justice is convinced that the accused is probably guilty, it is his duty to order the accused to be held until the meeting of the grand jury.

Bail. — 4. Except in the case of the most serious crimes, the accused has a right to avoid going to jail by giving bail; that is, by getting responsible citizens to agree to pay to the government a specified sum of money if he should not appear at the command of the court. It is the duty of the justice to inform the accused of his right to bail, and to fix the amount.

The Indictment. — 5. The grand jury attends the meetings of the court having jurisdiction over serious crimes. The evidence tending to establish the theory of guilt is presented. If in the opinion of the grand jury, the evidence will result in the conviction of the accused, it is their duty to indict him; that is, to present a formal charge against him, which is usually drawn by the prosecuting attorney. The grand jury may indict persons not previously held to appear by a magistrate. In such a case there is no complaint or preliminary examination; the arrest is made by order of the court after the indictment of the grand jury.

The Arraignment. — 6. The accused is brought before the court and the indictment is read to him. He is asked whether he has been indicted by his right name. He is also asked whether he is guilty or not guilty of the crime charged in the indictment. Before he answers this question he is entitled to the benefit of counsel. If he is unable to secure counsel, the court

appoints counsel for him. If the accused answers "guilty," the court sentences him to punishment according to law. If he answers "not guilty," a time is set for the trial. The answer which the accused makes of guilty or not guilty is called his *plea*.

The Trial. — 7. The object of the trial is to ascertain the guilt or the innocence of the accused. The form of procedure differs in the different states, but there are usually the following stages: —

1. **The Empanelling of a Jury.** — The clerk draws twelve names from the list of jurors who have been called to attend the sitting of the court. The accused, as well as the attorney for the state, may object to any of the persons selected, for reasons recognized by law. This is called *challenging* the jurors for cause. A certain number may be excluded by peremptory challenge; that is, a challenge without assigning any reason. If the list of jurors in the hands of the clerk is exhausted, the sheriff is directed to summon by-standers until the panel of twelve jurors is completed. The jurors are then sworn to decide the case according to the evidence and the law, as given them by the court.

2. **The Testimony.** — Having been sworn, the jury listen to the testimony. In many states the counsel for the state begins by giving to the court and the jury an outline of the evidence upon which he relies for conviction. Then the witnesses for the state are sworn and examined by him, and cross-examined by the counsel for the defendant. The counsel for the defendant may then give an outline of the evidence for the defendant, to be followed by the witnesses themselves. The state may introduce rebutting testimony.

3. **The Arguments.**—When the evidence has all been given, the counsel on each side presents an argument, to secure from the jury a verdict in his favor. The order of these addresses is not the same in all the states. In some the last address is for the defendant, and in others for the state.

4. **Instruction from the Court.**—The court then instructs the jury on the law applicable to the case. The jury are informed that they are the judges of the facts and the testimony; that if they find from the testimony that such and such are the facts, it will be their duty to bring in a verdict of guilty as charged; but that if from the testimony they find the facts to be thus, then it is their duty to render a verdict of not guilty. Or a state of facts may be set forth, in view of which the jury may find the accused guilty of a crime less than the one charged in the indictment.

5. **The Verdict.**—The jury may, while sitting in their places, confer together and agree upon a verdict. In case they do not thus agree, they are placed in charge of an officer, and are kept together in a room by themselves until a verdict is reached, or until it becomes manifest that they are unable to agree. If they fail to agree, a new trial may be had. If they bring in a verdict of not guilty, the defendant is set at liberty, and he cannot be tried again for the same offence.

6. **The Sentence.**—If the jury return to the court with the verdict of guilty, it then becomes the duty of the court to sentence the prisoner; that is, to tell him in open court what his punishment shall be. In some cases the law determines the exact penalty; in others, a measure of discretion is left to the court. For the

crime of burglary the penalty is imprisonment at hard labor in state's prison for a term of years. After sentence, the sheriff conveys the convict to prison and delivers him into the hands of the keeper.

7. **Appeals.** — The accused having been sentenced, his counsel may file a bill of exception to the rulings of the court, and may appeal to the higher court. The higher court does not try the case anew; it simply reviews the action of the lower court on matters of law. If it finds that errors have been committed, it may set aside the decision, which makes a new trial necessary before the accused can be punished. If an appeal is taken, the accused is kept in the county jail or held under bail until it is decided.

Civil Cases. — In criminal suits the plaintiff, or the party bringing the action, is the state, or the people. But in a civil suit both plaintiff and defendant are usually individuals or corporations. The method of beginning the action is not the same in all the states. The plaintiff in some way, by filing a petition with the clerk of the court, or by filing an order or a complaint, or by serving an original notice, makes known to the defendant that on a certain day of a certain term of court, suit will be brought for the recovery of a specified sum of money, which is due for such and such a consideration. If the defendant does not appear either in person or by counsel, and object to the claim, judgment is rendered against him and no contest occurs. If he appears, he makes a written answer to the petition in which he alleges that the claim is not due, or that it has been paid, or that it is in some way defective. The trial ensues upon the issue raised by the plaintiff's petition and the defendant's answer.

If either party demands it, a jury is empanelled to determine questions of fact. Otherwise the court decides all questions both of law and fact.

An appeal may be had by either party.

When a judgment is rendered against the defendant, an officer has authority to procure the money due, by seizing and selling any property of the defendant not exempted by law.

CHAPTER XXI.

COURTS AND OTHER GOVERNMENT OFFICERS.

Control of Public Officers. — A large part of judicial business is such as arises in the punishment of criminals, and in settling disputes between citizens. But courts are also closely connected with the executive business of government through their power over its officers.

Mandamus. — Civil officers may neglect to perform the duties prescribed by law. Upon the application of any citizen, who is interested in the matter, a court may issue an order commanding the officers to perform a specific duty. Such an order is called a *mandamus*, a word meaning "we command." If the officers still refuse to act, they may be sent to prison for contempt of court. The *mandamus* is used most frequently when the officers of a town, city, or county refuse to levy a tax to pay the debts of the government.

Injunction. — An injunction is an order from a court restraining an officer or person from the doing of some

specified wrong. The officers of a city may have levied an unlawful tax. An interested taxpayer may secure an injunction to prevent the tax from being collected.

The *mandamus* and the injunction are used against officers in such cases only as are not conveniently reached by ordinary prosecution. Officers are individually responsible for their acts, and they are subject to both criminal and civil prosecution for neglect of duty and for injuries done contrary to law.

Government Sued. — The school district, town, township, city, county, state, and the United States may each, under certain conditions, be sued in courts of law. One characteristic of a municipal corporation is its power to sue and be sued. In some states this power is not given to school districts or townships. While all these governments may be sued there is a vast difference in their relation to the courts.

Local Governments within the State completely Subject to the Orders of Courts. — A dispute may arise between counties as to which is responsible for the maintenance of a certain pauper. One county may bring an action in a state court having jurisdiction, and the county losing the suit would be compelled to support the pauper. A citizen may receive an injury on account of a defect in a sidewalk or a bridge, and the town, city, or county, responsible for the sidewalk or bridge, if proven in a court to be negligent, may be compelled to pay damages. The various local governments may have power to borrow money and issue bonds. If the bonds are not paid when due, the holder may bring suit in a state court and compel payment. Or, if the holder is a citizen of another state, he may

bring suit in a federal court, and compel payment. Either a state or a federal court may require the local taxing officers to levy a tax to pay off a judgment, on penalty of being punished for contempt of court. When judgment is rendered against an individual, the court orders his property to be seized to satisfy the judgment. A town, city, or county ordinarily has no property which may be legally seized. The only way to compel payment from such a body is to order the levy of a tax.

The Memphis Case. — The city of Memphis, Tennessee, became deeply involved in debt. There were suits in the courts for the enforcement of payment. The legislature of Tennessee abolished the municipal corporation of Memphis. The courts held that there was then no way in which the payment of the debts could be enforced. The property of citizens was not liable to seizure, and there was no public property liable. The Memphis corporation was an agent of the state, created by the act of the state, and the legislature had a right to abolish it. Afterwards the legislature gave to Memphis new corporate powers, and expressly declared that the new corporation was not empowered to levy a tax for the debts of the former. But the courts held that the new corporation was liable for the debts of the old; that the part of the statute declaring the new corporation not liable, and denying to it the power to tax for the payment of the former debts, was in conflict with the United States Constitution, which forbids a state to make any law impairing the obligation of contracts. The new city officers were therefore subject to the same penalties as the old, for refusing to vote a tax.

Suing a State. — The states borrow money and issue bonds. If the legislature refuse to levy a tax for their payment, there is no power in the state to force it to do so. The courts may order county commissioners, city councils, and school boards to levy taxes, because these are subordinate agents of the state; but the legislature is not a subordinate agent. The Supreme Court of the state has no direct power over it. If the legislature violates the constitution, the courts may refuse to enforce an unconstitutional act; but the Supreme Court may not issue an injunction to prevent it from violating the constitution; neither can it issue a *mandamus*, and compel it to act. The states by special statutes may allow themselves to be sued in the state courts for certain purposes. But the legislature, although by making the law it has consented to the suit, may prevent the execution of a judgment by refusing to appropriate money.

States and Federal Courts. — The Eleventh Amendment to the Constitution deprives a citizen of another state, or a citizen of a foreign state, of the privilege of suing a state in a federal court. One state may sue another in the Supreme Court of the United States, but states have little dealing with each other, and cases for litigation do not often arise. There is nothing in the Constitution to prevent the federal government from suing a state in the Supreme Court, but it has never been done. If the states were agents of the federal government, as counties are of the states, they would often be sued, and their action would be forced by the decree of a court. The states are not agents of the United States government. Even where the action of

a state has been in violation of the Constitution, laws, or treaties of the United States, the federal courts have not attempted to reverse it by direct command. They have never issued an injunction or a *mandamus* against a state legislature.

The Case of Missouri and Iowa. — Some instances have occurred where a boundary dispute between two states has been settled by a suit in the Supreme Court of the United States. The constitution of Missouri fixes the northern boundary of the state on a parallel passing through the rapids of the Des Moines River. The people of the territory of Iowa held that the Des Moines River rapids were several miles south of the point fixed by the people of Missouri. Settlements were made in the disputed territory, and in course of time, a sheriff from Missouri tried to serve a writ on a man who claimed to live in Davis County, Iowa. Great excitement ensued. The governor of Iowa ordered out the militia to defend the territory. The governor of Missouri likewise took measures to vindicate the authority of the state. Before proceeding to shed blood, it occurred to each of the governors that it would be wise to have a conference, and seek some other method of settlement. The conference resulted in an agreement to make up a case for the Supreme Court, which would involve the location of the Des Moines River rapids. This took the form of a suit brought by the state of Missouri against the territory of Iowa. The court decided the question of geography in favor of Iowa, and there was no further trouble in the matter.

Repudiating States. — If a state pass a law by which contracts between citizens are made invalid, the

citizen may go into a federal court and enforce his contract notwithstanding. The law is held to be void because it violates the Constitution. But a state may refuse to fulfil its own contracts, and the courts furnish no relief. States have borrowed money and issued bonds, and have refused to pay the bonds when due. A state court cannot force a state legislature. Bondholders are citizens, and a citizen cannot sue a state in a federal court. There is one form of contract into which some of the states have entered, which the courts have maintained against hostile state action. In the days of state banks certain states, which were owners of bank-stock, passed laws enacting that the bills of the state bank should be accepted for taxes due the state. Afterwards the legislatures passed laws requiring taxes to be paid in other kinds of money. The United States Supreme Court held that the latter laws were unconstitutional and void. The holders of the bank bills could still pay their taxes with them. It will be noticed that this decision involved no forcing of the legislature. It simply protected the citizen from having his property taken for taxes, after he had tendered the bills in payment.

The Virginia Bond Case. — The state of Virginia issued bonds with coupons, which were to be torn off and presented for the collection of the interest when due. The law also provided that the coupons be accepted by the state in the payment of taxes. The legislature afterwards passed a law forbidding the acceptance of the coupons. The Supreme Court ruled that this law was unconstitutional. Then the legislature passed a law requiring the coupons to be received by

tax-collectors, but requiring the payment of money at the same time. The taxpayer could afterwards recover his money by bringing an action in a Virginia court, and convincing a jury that the coupons were genuine. The excuse alleged for this provision was that fraudulent coupons were presented. The Supreme Court sustained this law, and the effect has been to nullify the original law.

Suing the United States. — If the power to sue a state is limited, the power to sue the United States is much more limited. The United States cannot be sued in any state court. Congress might follow the example of many states, and permit suits to be brought in certain cases in the federal courts against the federal government, but no such law has been passed, and without it suit cannot be brought. Congress has established a special court, called the Court of Claims, in which action may be brought for the collection of a certain class of claims, such as would otherwise be presented to Congress for settlement. It is only in this rather unimportant court that the United States can be sued. If it is almost impossible to compel a state by judicial process to pay its debts, it is entirely impossible to compel the United States to do so. It is because the United States never has repudiated a contract, that it can borrow money on terms most favorable to its taxpayers.

CHAPTER XXII.

FEDERAL JUDICIAL BUSINESS.

Cases in State Courts. — There are less than a hundred federal judges, and there are many thousands of state judicial officers. A large majority of the cases at law are tried in state courts. If only state laws are involved in the case, the federal courts can have nothing to do with it. Ordinary crimes, such as assault, theft, and murder, can be tried only in state courts. In like manner, nearly all cases arising in the administration of school laws, laws concerning paupers, highways, state taxation, the laws for the government of cities, and the holding of elections, are triable in state courts alone. It is only when some provision of the federal Constitution, or some act of the United States government is involved, that a federal court can act.

Cases exclusively Federal. — A state court cannot try cases arising in the administration of federal laws. Congress alone has made laws concerning post-offices, patent-rights, and copy-rights, and the collection of federal revenues. Offences against these laws or suits arising in their administration are tried only in federal courts. In a preceding chapter it has been shown that suits between states can be tried only in the Supreme Court of the United States. The Constitution also requires that cases affecting ambassadors, ministers and consuls be tried in the same court.

Optional Cases. — If the duties of the two sets of courts ended with the cases described, state courts in-

terpreting state laws, and federal courts federal laws, there could be no conflict between them. But the two governments have for their subjects the same people, and the division of business is not so complete as to prevent interference. Congress has made a law to punish counterfeiting. The states have done the same. A counterfeiter is therefore subject to punishment by two distinct authorities. A constitutional provision forbids that a person be tried twice for the same offence. When warrants have issued from two courts for the same person at the same time, the government which succeeded in catching the accused has been permitted to try and punish him.

Removals from State Courts. — The Constitution gives to federal courts jurisdiction in controversies: (1) between citizens of different states, (2) between citizens of the same state claiming lands under grants of different states, and (3) between a citizen of a state and foreign states, citizens or subjects.

In all these cases the plaintiff may begin the action in a federal court, but he is not required to do so. The great majority of such cases are tried in the state courts. The statutes of the United States provide that they may be removed to a federal court when the alien or the citizen of another state, who is a party to the suit, certifies that he believes that on account of local prejudice he cannot secure justice in the state court. Removals from a state to a federal court may also be had in cases involving the grant of property by the United States, or the grant of land by another state, and cases in which United States officers become involved on account of some official act.

New Trial. — Suits thus carried from a state to a federal court begin trial anew. They are such suits as are ordinarily tried in state courts. The reason for going into a federal court is the fear of local prejudice. The federal court simply takes the place of the state court, and it must apply to the case the same law. The case is not decided twice. If the party, who has a right to remove, permits the case to be decided in the state court, he has no right of appeal to a federal court.

Appeals to a Federal Court. — Appeals from a state to a federal court can be had only after a case has been passed upon by the highest court in the state, and the state court has decided against the validity of some law, treaty, or act of the United States government, or in favor of the validity of some law or act of the state government which is alleged to be in violation of the Constitution, laws, or treaties of the United States. Few cases at law in state courts admit of appeal to a federal court.

In the tenth section of Article I, of the Constitution, there are several direct prohibitions upon the states. The greater part of the prohibitions have never been violated. The one which has given rise to most controversy is that forbidding the state to make a law impairing the obligations of a contract. The Virginia coupon bond case, and the cases growing out of the refusal of states to accept for taxes the bills of state banks which had been issued under a law providing that they should be so accepted, may serve as illustrations.

A clause in the Fourteenth Amendment has given rise to several important appeals from state courts.

The words are, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person, within its jurisdiction, the equal protection of the laws." Several of the states have passed laws prohibiting the manufacture and sale of intoxicating liquors to be used as beverages. Those whose property has been thus destroyed have secured appeals from state to federal courts, on the ground that the law deprived them of property without due process of law. In these cases the Supreme Court has sustained the action of the state. The states have a large discretion in the exercise of police power. The destruction of property was only such as was incidental to the exercise of the police power which, the court held, belongs to the state.

PART IV.

MATTERS CHIEFLY FEDERAL.

CHAPTER XXIII.

THE PRESIDENT.

His Election. — The method of choosing the President, as determined by the Constitution and the laws of Congress, and of the states, has been described in a former chapter. The Constitution empowers each state to appoint presidential electors in any way its legislature may direct, and it gives to Congress the duty of canvassing the votes. Decisions concerning the claims of rival electors are, by a recent act of Congress, left to the state. The framers of the Constitution intended to remove the choice of the President from what they regarded as the dangers of a popular election. It was expected that the electors chosen by the states would be men of superior wisdom, who would meet in their various states at the time fixed by law, and by their own matured judgment, select the President. At first in many of the states the legislatures chose the electors. Parties were soon organized, and party candidates were named in advance; then electors were chosen, not to vote according to their own judgment, but to vote for the party candidate. As the choosing of electors by

popular vote has become universal, the people virtually elect the President.

The Constitution changed by Custom. — The method of electing the President furnishes the best illustration in our history of a change in the Constitution accomplished by custom. The Constitution clearly gives to the electoral college the power to choose the President. Custom has taken from it that power and given it to the people. Yet the words of the Constitution have remained unchanged. The question has often been asked, What would happen if the electors should follow the form of the Constitution, and, disregarding the people's candidate, elect another to the presidency? No answer can be given to this question. Horace Greeley was a candidate for the Presidency. Before the meeting of the electors he had died. If he had been the successful candidate, the electors chosen to vote for him would have been confronted with a grave responsibility. It would have been their duty to unite their vote upon some one who would be acceptable to the party which had elected them. As it was, the Greeley electors divided their votes among four candidates.

Succession to the Presidency. — The Constitution provides: 1. That in case of vacancy in the Presidency, the office shall devolve on the Vice-President. 2. That in case of vacancy arising from removal, death, resignation, or disability of both President and Vice-President, Congress may by law declare what officer shall act as President.[1]. Four times a Vice-President has become President upon the death of the President. No one

[1] Art. II. sec. 1. cl. 6.

has ever become President by virtue of an act of Congress. The Vice-President, according to the Constitution, is the presiding officer of the Senate. The Senate elects a president *pro tempore*, to occupy the chair in the absence of the Vice-President. The law formerly made this officer the first to succeed to the Presidency after the Vice-President. When Cleveland was President the Vice-President died. The president *pro tempore* of the Senate was a Republican. The death of the President would cause a change in the politics of the administration. To avoid this contingency Congress passed a law making the members of the Cabinet successors to the Presidency in the following order: 1. the Secretary of State; 2. the Secretary of the Treasury; 3. the Secretary of War; 4. the Attorney General; 5. the Postmaster General; 6. the Secretary of the Navy; 7. the Secretary of the Interior. The Secretary of Agriculture was not then a member of the President's Cabinet.

The Cabinet and the President. — The Constitution makes no mention of a Cabinet. A clause gives to Congress power to vest the appointment of inferior officers in the "Heads of Departments,"[1] thus assuming that such officers will exist. One of the first duties of a newly inaugurated President is to send to the Senate the names of his proposed Cabinet. It has almost come to be a part of our unwritten Constitution that the Senate shall confirm any nomination for the Cabinet which the President may choose to make. The President is responsible for his administration, and needs for Cabinet officers his immediate political friends as advisers; it would be regarded as unfair for the Senate

[1] Art. II. sec. 2. cl. 2.

to interfere with his choice except for important reasons. At the close of the Civil War, President Johnson adopted a policy which the majority of Congress viewed with alarm. Johnson proposed to dismiss those members of President Lincoln's Cabinet who had not resigned, and to fill their places with men of his own views. Congress passed a tenure-of-office act, to prevent these removals, and thus to retain in office some of the members of Lincoln's Cabinet. A bitter contest arose between the President and Congress, which resulted in his impeachment. On the trial the Senate lacked one vote of the two-thirds necessary to convict. The President gained his point; Secretary Stanton resigned, and one of the President's own nominees was confirmed by the Senate. Such a contest is not likely to occur again.

Political and Non-Political Offices. — A Republican Cabinet officer would be an unsatisfactory adviser for a Democratic President, because they would differ in their views on governmental policy. A Cabinet position is a political office, because the occupant helps to shape the principles and policy of the administration. A foreign minister may also be closely connected with governmental policy. A postmaster is not a political officer. His opinion is never asked on matters of state. His business is purely administrative. The political offices are few in number; the non-political are numerous.

The Appointing Power. — The Constitution makes it the duty of the President to nominate and, with the approval of the Senate, to appoint all officers of the United States not otherwise provided for by law. The officers in the civil service have become very numerous. The places to be filled are estimated at near two

hundred thousand. A large proportion of these are merely hired assistants, and are not subject to appointment. The making of appointments to office now constitutes a large part of the business of the President. It was not so during the first forty years of the history of the Constitution. The officers were not numerous, and the tenure of office was permanent; removals being made only when the business demanded a change. A law establishing a four-years tenure to many of the offices filled by appointment, and the introduction of the so-called *spoils system* have greatly increased the labors of the President.

The Spoils System. — During Washington's administration the question was raised whether the President should have the power to remove from office or whether removals should be governed by law. It was alleged, in favor of a law, that if the President had power to remove, he might turn out all officers in the civil service and fill the places with his own personal and party friends. Mr. Madison said that the Constitution furnished an effectual remedy against such an abuse of power. A President who should make removals for such a purpose would himself be subject to impeachment and removal from his own high trust. Madison's view of the Constitution was the prevailing one till Mr. Jackson became President, in 1829. Mr. Jackson actually removed nearly all who held office by appointment, and filled their places with personal and party friends. Since the time of Jackson his method of appointment has become general. The party which carries the election expects to have all the offices, in accordance with the doctrine, "To the victors belong the spoils."

Objections to the Spoils System. — Against the spoils system the following objections, among others, may be urged: —

1. It tends to degrade the office of the Presidency. Mr. Colfax relates that a clergyman from a small town, calling upon President Lincoln in the interest of a post-office candidate of his town, prefaced his business by remarks upon the cruel war and the great responsibility which it entailed upon the President. "Oh, it is not the war," Mr. Lincoln replied, "I can get along with the war very well. It is your plaguy little post-office that is killing me!" The spoils system takes up the time of the President with unimportant, and often contemptible, business.

2. This unworthy business involves congressmen as well as the President. Congressmen have taken advantage of the helplessness of the President in his efforts to distribute spoils, and assume to control the appointments in their own districts. This brings upon the President a new difficulty. The Constitution makes him responsible for making the appointments and conducting the business; but men who are not responsible select as officers those who are often wholly unsuited to his purposes. Many congressmen are thus hindered almost entirely from giving attention to their own responsible and constitutional business.

3. The spoils system tends to create a limited class of office-seekers and office-holders. The great majority of citizens never seek for or expect an office, but it is for their interest that the best qualified should have a chance at every appointment. Successful spoilsmen get control of party machinery and strive to

limit office holding, both state and federal, to their own class.

4. The spoils system tends to destroy an interest in politics on the part of the great body of citizens. All intelligent citizens are naturally interested in the policies and the issues of statesmanship, which affect the welfare of themselves and of their families. The distribution of offices does not personally concern them. If the place for a statesman is filled by a distributer of offices, the multitude can have little interest in him.

5. The spoils system tends to destroy party life and party harmony. The life of a party comes from a common purpose to promote some principle or some policy of government. In so far as patronage displaces statesmanship it is a direct attack upon real party life. Those who are not office-seekers will lose interest in their party when their leaders cease to labor for its principles. The office-seekers in the party tend to divide into warring factions, who feel towards each other a greater hostility than towards the members of the opposite party. The assassination of President Garfield arose from a bitter factional war over the spoils of office. The "independent" voting which causes the defeat of a party often comes from a disappointed faction among its office seekers.

6. The system tends to promote corruption. It is theoretically possible under the spoils system that only those should receive office whose devotion to the principles and policy of the party would make them labor for party success as earnestly without the hope of office. Many offices are thus distributed and no taint of corruption is involved. But in other cases offices

are given to stimulate party workers. Nay, in some cases men receive office because they would otherwise work to defeat the party. This is bribery pure and simple.

It is in itself perfectly honorable and upright for an office holder to give money toward the expenses of a political campaign. Many give from true party interest. In other cases officers are made to feel that unless they give the sums specified by a party committee, they will be removed from office. Sums thus exacted lower the virtue of party committees.

Congressmen in whose interest the party funds have been expended are tempted to make good to officials their political assessments by increased salary, and to maintain idle offices for those who have worked or are working simply for the party. Here are involved the three distinct crimes of bribery, blackmail, and misuse of funds. Yet in each case the act may be with difficulty distinguished from an honorable deed or an error in judgment. The agent may find himself acting from a corrupt motive before he is aware of being tempted. It is the insidiousness of the spoils system which constitutes its peculiar danger, and which caused Horace Bushnell to say that such a system would corrupt a nation of angels.

Obstacles to Reform. — If the President and congressmen would simply return to the method followed during the first forty years, the reform would be accomplished. It is difficult for them to do this. They have been elected under the spoils system. They have in many instances secured position, not by the advocacy of political measures before the voters, but by promises

of political favors to the few party managers. Many of these know that they would not be chosen to office for their ability to understand and state political issues. Some of them, seeing the general indifference to federal politics which the spoils system has created, have come actually to believe that the system is necessary in order to prevent a decay of political interest. It is doubtless true that in the case of individuals there would be a loss of interest. The reform is thus opposed by a large part of the official class. Its evils are not such as to be readily seen.

Present Laws. — In view of the many obstacles to reform by a voluntary change of habit, it is necessary to resort to compulsory legislation. Thus far the laws passed are: 1. One forbidding party committees to levy assessment upon public officers; 2. One forbidding public officers to engage in active party work; 3. A law requiring entrance to office in a part of the service to be through an open competitive examination. The last provides for a civil service commission to supervise its enforcement. The law also authorizes the Executive to extend the rules to classes of officers not named in the statute. The reform will be completed when, either by law or by custom in the federal service, the non-political officers shall never be called in question for their political opinions; when there shall be no removals for political reasons; when vacancies shall be filled with sole reference to business ability; when a candidate for a political office can no longer secure place or promotion by bestowing favors upon the few, but shall be required to convince the many of his ability to understand and promote political measures.

CHAPTER XXIV.

FOREIGN SERVICE.

Treaties. — When our revolutionary fathers adopted the Declaration of Independence, and thereby expressed their determination to become a separate and independent nation, they immediately took steps to secure the recognition and assistance of other nations. They sent ambassadors to France; and after two years a treaty was signed with that government, acknowledging the independence of America, and promising assistance in the war against England. The co-operation of Spain in the war was secured in the following year. In 1783 a treaty was completed with the English government whereby our independence was acknowledged. At the same time a treaty was made with Spain, fixing the boundary of the United States on the south and the west. Florida was made the boundary on the south, and the Mississippi River on the west, while Spain kept control of the mouth of the river. In 1803, by a fortunate turn in the affairs of Europe, it became possible for the United States to purchase from France the vast territory west of the Mississippi River, since known as the Louisiana Purchase. This gave to the United States entire control of the Mississippi.

Other Purchases. — In 1819, Florida was purchased of Spain; and a definite boundary for the Louisiana purchase was fixed. This boundary was so run as to give to the United States Oregon and Washington on the Pacific coast. At the close of the Mexican War,

in 1848, the treaty of peace secured to us the Rio Grande and Gila rivers as our boundary on the southwest. A strip of land south of the Gila was purchased of Mexico, in 1853.

Boundary Disputes. — In adjusting our boundary on the north, we have dealt with England. For many years there was a dispute as to the precise location of the northern boundary of Maine. The treaty made in 1783 was not clear in its terms. This dispute was finally settled by the Ashburton Treaty, in 1842. The treaty with Spain in 1819 gave to the United States, so far as the claims of Spain were concerned, the Pacific coast north of the 42d degree of north latitude. But the English nation claimed the entire region as a part of their territory. The United States claimed the coast region west of the Rocky Mountains as far north as 54° 40′. Several treaties recognize this as disputed territory. A treaty with England in 1846 fixed upon the 49th parallel as the dividing line. A treaty with Russia in 1867 gave us Alaska.

Other Foreign Service. — These are the important treaties by which our territory has been extended. Besides questions of territory, there are many other things which claim the attention of nations in their dealings with each other; questions concerning commerce and the navigation of seas and rivers, the surrender of escaped criminals, the protection of citizens travelling or residing abroad, immigration, postal business, and many other matters of greater or less importance.

Constitutional Provisions. — The entire business of dealing with foreign nations has from the beginning been in the hands of the federal government. The

Articles of Confederation forbade the states to make treaties or to conduct official business with other nations without the consent of Congress. The Constitution makes it unlawful for a state to make a treaty under any circumstances.[1] It would lead to infinite confusion and trouble to allow the states to carry on official business with a foreign nation.

The Secretary of State. — Washington made Thomas Jefferson his first Secretary for Foreign Affairs. The legal name of this division of the Executive is the Department of State. The head of the department is called the Secretary of State. He occupies the place of greatest dignity and honor in the President's Cabinet. He receives all ambassadors and ministers from foreign nations, and introduces them to the President. He conducts the correspondence with other nations, and is the custodian of the archives of the government.

Division of the Service. — In the State Department many of the officers reside in foreign lands. They are divided into two classes assigned respectively to the diplomatic and to the consular service.

Diplomatic Service. — In the diplomatic service the officers have to do chiefly with governments. They reside at the capital of the nation to which they are sent, and receive instructions from the President, communicated through the Secretary of State. It is their duty to secure, so far as possible, a favorable consideration of all our interests. Communications to or from foreign nations are made through our diplomatic agents abroad, or through foreign ministers at Washington.

[1] Art. I. sec. 10.

The diplomatic agents of highest rank are "Envoys Extraordinary and Ministers Plenipotentiary," who represent our government at the capitals of Great Britain, France, Germany, Russia, Austria, and other large states. The second class, called "Ministers Resident," are employed in less important nations, as Central America, Sweden, and Turkey. The third class receive the name of "Chargés d'Affaires," and are sent to Denmark, Portugal, and a few other small states, or are employed temporarily to supply vacancies in larger states. The diplomatic officers are assisted in some of these countries by secretaries of legation and interpreters.

Consular Service. — The officers in the consular service are more numerous than those in the diplomatic. They have to do chiefly with the rights and interests of individuals. All foreign countries frequented by Americans are divided into consular districts, and a consul is appointed for each one. If an American dies within the limits of the district, and leaves no provision for the settlement of his estate, it is the duty of the consul to take charge of it, pay debts, collect dues, and transmit the remainder of the property, or of the proceeds from its sale, to the treasury of the United States, to be holden for the legal claimants. If an American in a foreign country wishes to make certain legal documents for use in America, the business is done by a consul. These are examples of a multitude of things which a consul may be called upon to do.

Consuls and Commerce. — But by far the most important business in the consular service is that connected with American shipping. The consul must

keep a record of all American vessels entering his port, the number of seamen, the tonnage of each vessel, the nature and value of the cargo, and various other items. The consul is the legal guardian of the rights of American seamen. If seamen are destitute, it is his duty to furnish relief at the expense of the United States government. He may require ship-masters to convey sick or destitute seamen to the United States.

The Alabama Case. — It is the duty of all ministers, consuls, and agents of the United States in foreign lands to collect information which may be of use to the United States government or people. The famous *Alabama Case* furnishes a good illustration of the practical working of our foreign service. It was the duty of our consul at Liverpool to learn the fact that a ship was building for the purpose of preying upon American commerce. Having learned the fact, it was his duty at once to inform the Secretary of State. It was then the duty of the Secretary of State to request the British government to prevent the vessel from going to sea. When, through the negligence or connivance of British officials, the vessel had been permitted to go to sea, it became the duty of the Secretary of State to notify the British government that the United States held itself entitled to full compensation for all the damages inflicted upon American property by the *Alabama*. Having set forth this claim, it was the duty of each Secretary of State, in all proper ways, to insist upon a settlement at the hands of the English government, until an agreement was reached.

Salaries. — During the year 1889 there were in the diplomatic service thirty-three officers, whose salaries

ranged from $5,000 to $17,500. In the consular service there were two hundred and forty-three, whose salaries were from $1,000 to $6,000.

CHAPTER XXV.

THE TREASURY DEPARTMENT.

Origin of the Treasury Department. — In February, 1776, the Continental Congress passed a resolution for the appointment of a standing committee to superintend the treasury. In 1779 the department was reorganized and the business was committed to a Board of five Commissioners, three of whom were not members of Congress. In 1781 the Commissioners were displaced by a Superintendent of Finance, and Robert Morris was first chosen to this office. Washington made Alexander Hamilton his Secretary of the Treasury. Under his wise management the department received a form of organization which has in many features continued to the present day.

The Constitution gives to Congress power to levy taxes, to borrow money on the credit of the United States, and to coin money. The execution of the laws made in pursuance of these powers is through the agency of the Treasury Department. The collection of taxes is the largest part of executive business.

Internal Revenue. — The government derives about one third of its revenue from a tax upon distilled and fermented liquors and tobacco. For the collection of the tax the entire country is divided into districts, and

a collector is appointed for each district. For a time during and after the Civil War a large number of articles were taxed and the income from this source exceeded that from all others. The term internal revenue includes all taxes on the products or manufactures of the country, upon banks and bankers, the income from the sale of stamps, such as the stamp upon bank checks, and licenses, or taxes upon occupations, and income taxes. It does not include the revenue from the sale of public lands or the revenue from postage-stamps. The tax upon liquors and tobacco is paid by the manufacturers and dealers. Nearly all other forms of internal revenue have been abolished.

Customs. — The revenue from duties imposed upon imported goods was, for the year 1888, $219,000,000. This was nearly twice the income from internal revenue for the same year, and was more than half the entire government income. Of this amount there was collected from duties on tobacco and liquors $16,000,000; from sugar $50,000,000; from iron and steel, $21,000,000; from wool and woollens, $32,000,000. The remaining part is collected from a multitude of articles. For the collection of the customs, the coast line, the banks of navigable rivers, and the boundaries between the United States and Canada and Mexico are divided into collection districts. Ports of entry are established by law, through which all imported goods are required to pass. A large proportion of the revenue from customs is collected at the single port of New York.

Commerce and Navigation. — To attend to the collection of revenue from imports, the government has to maintain officers at all the ports of entry. To prevent

smuggling, guards are necessary along the coast. On account of the nature of the business of the Treasury Department, it is entrusted with the execution of the various laws on commerce and navigation, such as laws for the inspection of ships and steamboats to determine whether they should be permitted to go upon the water, the laws to maintain lighthouses and buoys along the coast, the life-saving corps and the coast-survey, the laws for the preservation of seals in Alaska, and the laws to prevent the introduction of diseased animals. The department also has charge of hospitals for the use of seamen.

Public Improvements. — Since 1853 there has been connected with the department an office for superintending architecture. It supervises the erection of all buildings for the department, such as custom-houses, mints, assay offices, marine hospitals, and, in addition, post-offices and court-houses. Skilled engineers from the War Department are employed in this office. The improvement of rivers and harbors is also under this department.

Sub-Treasuries. — During the years from 1792 to 1812, and from 1816 to 1836, when there was a national bank, the Treasurer was required to deposit the funds with the bank. During President Jackson's administration the funds were distributed, without warrant of law, to certain state banks. By their failure in the great financial crisis of 1837, the treasury incurred loss. In 1840, a law was passed for keeping the funds without depositing in any bank, state or federal. It was provided that sub-treasuries should be established in certain cities for the receiving and holding of funds, subject to the order of the Treasury Department at Washington.

This law was repealed in 1841, was re-enacted in 1846, and is still in force. Assistant, or sub-treasurers, are located at Baltimore, Boston, Chicago, Cincinnati, New Orleans, New York, Philadelphia, St. Louis, San Francisco, and Washington.

CHAPTER XXVI.

MONEY AND COINAGE.

Origin of Money. — It is probable that in the earliest times governments had nothing to do with the selection of a commodity to be used as money. People, without any aid from the government, selected whatever valuable thing was most convenient, and used it in setting prices in their exchanges. In this way, all sorts of things have been used as money. Among the multitude of the things which have been thus used, gold and silver are the principal materials which have survived. These were originally used for money just as iron was used for ploughs, wool for clothing, and wheat for bread, not because of any statute made by governments, but because of their fitness for the use. Governments have recognized and adopted what the common sense of mankind had already fixed upon as the best measure of value.

Coinage. — In early times gold and silver were weighed out in exchange. The knights of the middle ages carried scales at their sides for the purpose of weighing the silver. But silver can be so mixed with other metals, that it is difficult to determine how much there is. Persons who become skilled in assaying and

mixing gold and silver have great advantage over the rest of the community. To protect the community from fraud, it is desirable that the government provide for assaying the metal and dividing it into pieces of uniform sizes, convenient for use. Each piece is stamped to make it evident that the work has actually been done by government officers. The object is to adopt such a stamp and employ such methods as will make counterfeiting difficult.

Money of the Colonists. — The first English colonists in America were obliged to live in that rude, primitive condition, in which some more bulky form of property is better fitted than gold and silver to be a medium of exchange. Tobacco, furs, wampum, salt, codfish, cattle, and other things were at different times and in different places used as money; and these various kinds of extemporized currency were made legal tender by the colonial governments.

In course of time, the accumulation of wealth in the colonies was such that they could command a portion of the silver of commerce. The silver which came to them was largely in Spanish coins. The first effort at coining in this country was made by the colony of Massachusetts, in 1652. The English government did not allow the colonies to coin money. They were expected to use English coins, and to trade only with England. Not much was done in the way of coining money in this country until the Revolutionary War. The colonists had various disastrous experiences in their attempts to make money out of paper.

The Money of the Revolution. — With the opening of the Revolutionary War the various colonies came into

the possession of full power in the matter of monetary legislation. Under the stress of the times, the Continental Congress fell into the habit of issuing paper money; this was made by the states a full legal tender in the payment of all debts, public and private. One result was that no money of real value could remain in circulation. The people were left to the distressing experience of carrying on a great war with a worthless currency. Before the war ended the money had become entirely valueless. Pelatiah Webster, the financial historian of the Revolution, said of this money, "We have suffered more from this cause than from every other cause or calamity." The Articles of Confederation assumed that the separate states had a right to coin money, and they provided that the Continental Congress might also do the same; but they gave to Congress alone the power to regulate the alloy and the value of all coins made by either state or federal government. The Constitution provides that the federal government alone shall have power to coin money. The states are expressly prohibited from coining, and from making "anything but gold and silver coin a tender in payment of debts."[1] This makes it possible always to secure a uniform currency for all parts of the country.

Difficulties with the Standards. — Our government at first made both gold and silver coins a full legal tender in the payment of debts. But in fixing the weight of the coins, it chanced that the gold coin was worth more than the silver; and the result was that gold would not circulate, and we had only silver as money. By the legislation of 1834 and 1837 the gold coin was made

[1] Art. I. sec. 10.

lighter, so that silver coin of full weight was worth more than the corresponding gold coin; whereupon, the silver coins were immediately collected by speculators, and melted down, and the people were brought into distress for lack of change. Merchants resorted to various devices, especially to the importation of foreign coins. The influx of gold from California, beginning in 1849, had the effect to aggravate the difficulty.

The Difficulty overcome. — This distress continued until 1853, when our law-makers adopted a device which had been found to work well in England. Silver coins of fifty cents and less were intentionally made light, so that they were worth less than gold, and were made a legal tender in small sums only. This device protects the people from the speculators, and secures the use of both metals as a medium of exchange. There is no temptation to melt down a light silver coin, and the government keeps the light coin at full value in trade by retaining a monopoly of the manufacture, and by furnishing only enough to supply the demands of commerce. Under such circumstances, these light token coins will always "pass" at the full gold value, upon which all prices are based. So long as gold is the actual measure of values, there is no temptation to melt a gold coin, because no one can buy it without paying the full price for it.

In 1873 the silver dollar, few of which had ever been coined, was omitted from the list of coins. In 1878 it was restored by act of Congress, and made a full legal tender in the payment of all debts. The act also provided that the manufacture of these dollars might be limited to $2,000,000 per month. Owing to this limita-

tion, and to the further fact that the Treasury Department has exercised a wise discretion, and has not forced silver into circulation, we have thus far been able to keep in circulation both gold and silver.

Gold Coins. — The gold dollar weighs 25.8 grains and contains 23.22 grains of pure gold. This is the standard of value; the money in terms of which prices are set. The gold dollar is inconveniently small, and few are coined. The laws authorize the coinage of two-and-a-half-dollar and three-dollar gold pieces, but these are not greatly used. The coins most used are the five-dollar, ten-dollar, and twenty-dollar pieces. Any owner of gold may take it to the mint or the government assaying office where its quantity will be determined, and he will receive for it the same quantity of gold in the form of coins. The government makes no charge for coining, but it requires the owner of the gold to pay for the copper alloy used in the coining. It will be observed from this that the value of the gold bullion and of the gold coin are the same. The mints furnish a convenient way for all owners of gold to market their ware.

Silver Coins. — The mints do not furnish an unlimited market for silver. The government is required to buy enough silver to make $2,000,000 per month. For this the government pays the market price, which, during the eleven years in which the law has been in force, has varied from seventy to ninety-two cents on the dollar. The government also buys silver to make the smaller silver coins in use for change. The quantity purchased for this purpose varies with the demands of trade. For the last ten years the amount kept in

circulation has varied from seventy to seventy-seven million dollars. It requires only small purchases each year to keep up the amount. The smaller coins contain less silver according to their value than does the silver dollar. When the silver in the dollar is worth seventy cents, the silver in two half-dollars is worth about sixty-five cents. The government, by purchasing the silver and coining on its own account, secures a profit. On the silver dollar, however, the profit is dependent upon the government's maintaining the gold standard of values. If silver should be received and coined in unlimited quantities, as is gold, or if the dollars should be forced in large quantities upon an unwilling public, the silver dollar would cease to bear the gold value, and would have simply the value of the silver which is in it. If such a policy should continue, gold would cease to circulate as money, and the silver dollar would be the money of account and the standard of value. There could then be no profit to the government in buying silver and coining dollars; the silver in the dollar would cost the full value of the dollar. The smaller silver coins are a legal tender only in payments of ten dollars or less. It is therefore, under present laws, impossible for the government or any one else to force into circulation the small coins in such quantities as to destroy the present standard of values. The silver coins now authorized by law are the dollar, the half-dollar, the twenty-five-cent piece, and the ten-cent piece.

Minor Coins. — The government used to coin a silver five-cent piece. This was inconveniently small, and a nickel coin is now made to take its place. There is also a nickel three-cent piece. For still smaller change,

the copper or bronze two-cent and one-cent pieces are furnished. All these minor coins are made on government account, and the cost of the material is only a small part of their current value. These coins are a legal tender to the amount of twenty-five cents. The government bears the expense of distributing the minor coins and the silver coins to the places where they are needed.

Gold and Silver Certificates. — The government permits the owners of gold coins and of silver dollars to deposit them in the treasury and receive for them certificates of deposit in amounts of five dollars or more. These certificates are not a legal tender, yet they circulate as money. The holder of a certificate can at any time obtain the coin by presenting the certificate to a sub-treasury. A gold certificate will command gold coin, and a silver certificate will command silver dollars On November 1, 1888, the silver dollars in the country amounted to nearly $310,000,000. Of these, the treasury held nearly $228,000,000 against certificates which were circulating as money. At the same time out of the $711,000,000 of gold coin and bullion in the country, $140,000,000 were held by the treasury against outstanding certificates.

CHAPTER XXVII.

BANKS.

The Bank of North America. — The first bank in the United States was the Bank of North America, chartered by the Continental Congress and by the state of Pennsylvania, in 1781. Robert Morris was the chief agent in its establishment. It proved to be a great blessing to the country. Bills were issued, and were always kept at par by the prompt payment of coin upon presentation.

Control of Banks assumed by the Federal Government. — When the new Constitution was adopted, one of the questions early claiming the attention of the government was whether the regulation of banks endowed with the privilege of issuing notes belonged to the states or to the federal government. A majority of Congress assumed that it belonged to the federal government, and passed a law for the establishment of a Bank of the United States, with the privilege of continuing in business for twenty years. During that period, the federal and the state governments maintained banks of issue at the same time. This is now conceded to be bad policy.

After a trial of twenty years, the federal government refused to re-charter the Federal Bank, and thus the banking business came entirely under state control. This continued for four years, till 1816, when there ensued such financial distress, that Congress chartered another national bank for twenty years. At the end of

this time Congress was prevented from re-chartering, first, by the veto of President Jackson, and afterwards by that of President Tyler.

State Banks. — From 1836 till 1863 the banking business was left entirely under state control. Each state was free to adopt any system it chose. Some of the states made wise laws, and some banks conducted their business wisely, so that their bills were kept at par with gold. Other states made unwise laws, and a multitude of banks sprang up which were mere swindling institutions. It was found impossible to secure uniformity in the value of paper money. So long as a bank continued to pay gold upon presentation of its bills, they would circulate at par in its vicinity. But there were comparatively few state banks whose credit was such that their bills would circulate in all parts of the country.

The New York Banking System. — In the midst of the Civil War our present banking system was adopted. Congress, in planning this system, had the benefit of the experience of the states, which had been conducting experiments in banking for more than twenty years. The state of New York had adopted a method by which, in case of the failure of a bank to redeem its bills in gold, the holders of them were secured against loss. It required the banks to deposit with a state officer a sufficient amount of property to redeem all the bills which they were allowed to issue. The property designated by law for this purpose was, for the most part, government bonds. Iowa, following the example of New York, had adopted a similar system.

National Banks. — Congress, in 1863, had to provide means for carrying on a great war. The only way to get the money in sufficient quantities was by borrowing, that is, by selling bonds. As the New York system required banks of issue to purchase bonds, it occurred to congressmen that to charter national banks on such a system would create a demand for United States bonds. The state banks of issue were gotten out of the way by a special tax, which made it impossible for them to continue their circulation.

The New York system permitted the banks to purchase a variety of bonds of state and municipal governments. The federal system requires all banks of issue to buy United States bonds. These bonds are deposited with an officer in the Treasury Department, called the Comptroller of the Currency. The bills which the banks are permitted to issue are all printed in the Treasury Department at Washington. A company of five or more citizens who wish to organize a national bank are required first to buy United States bonds. If they deposit bonds of a par value of $100,000, the government will then furnish to the bank $90,000 in blank bills, which, when signed by the proper officers of the bank, become notes of the bank, and may be loaned like other money. The bank is required to deposit a five per cent redemption fund, so that the amount of money available for business is less than $90,000.

If a national bank fails, its bills are still good, because the property of the bank held by the Comptroller of the Currency is amply sufficient for their redemption. These bills are a convenient and satisfactory

medium of exchange, are everywhere of equal value, and are received without question.

It would seem that, after a hundred years of experimenting, we have settled at least one principle, namely, that the federal government shall control all forms of money.

Treasury Notes. — We have a sort of paper money issued directly by the government, in the form of legal-tender notes, or "greenbacks." These likewise originated in the Civil War. For many years this paper was forced upon the people by the power of government. During all this time it was a fluctuating and uncertain measure of value; was worth less than gold, so that money of real value would not circulate at the same time. In 1879 the government began the payment of gold for greenbacks, upon presentation. Since then, greenbacks have freely circulated on a par with gold. They now have the same standing as bank notes. The Treasury Department of the government is made a sort of bank of issue. But instead of loaning the money, as other banks do, it pays it out for current expenses. The amount of greenbacks in circulation is about $350,000,000. The national bank notes in circulation in November, 1888, were about $240,000,000. The money of all kinds was $1,694,000,000.

United States Bonds. — In 1865 the interest-bearing debt was $2,381,000,000; in 1888 it was a little more than $1,000,000,000; of this $714,000,000 are four per cent bonds, and are not payable until the year 1907. Many of the bonds are owned by national banks. As these bonds are paid off, the banks will come to an end unless the laws are changed. Under present laws

a national bank is compelled to own United States bonds.

Bureau of Engraving and Printing. — To supply treasury notes, bank notes, silver and gold certificates and United States bonds, there is in the Treasury Department at Washington a Bureau of Engraving and Printing. To make counterfeiting difficult it is important that the plates be carefully engraved and that the paper be manufactured in a peculiar manner.

The various kinds of business in the Treasury Department require the constant service of a very large force. The Post-Office is the only department that surpasses it in the number of officials. In the importance of its business and in its close relation to the welfare of the people, it is inferior to none.

CHAPTER XXVIII.

THE POST-OFFICE DEPARTMENT.

Origin of the Postal Service. — Governments in early times provided means of communication between government officials; but the carrying of private letters by the government is quite modern in its origin. In England this did not take place until about the time of the founding of English colonies in America. Before the government undertook the distribution of intelligence for individuals, this business was done by private enterprise.

Massachusetts, Virginia, and New York.—In 1639, the General Court of the colony of Massachusetts

ordered that the house of Richard Fairbanks should be the place for the receiving of all letters from beyond the sea. This is the first notice of any act of government on the subject in America. Mr. Fairbanks was allowed a penny for the delivery of each letter, and was made answerable for negligence. Previous to this time, when a ship landed in Boston, it was customary for families to send some one on board to receive their letters. Letters not delivered from shipboard were spread out on a table, at the nearest coffee-house. When a person from the country came in to the coffee-house to get letters, he would carry out all the letters for his locality, and deliver them himself, or leave them with the minister, or at an inn. Thus a rude postal system grew up; and it was used not only in the delivery of letters from the port, but for communication between towns.

In Virginia, the first law on this subject was passed in 1657. It required each planter, on pain of forfeiture of one hogshead of tobacco, to convey dispatches as they arrived to the next plantation. This law is proof of the prevailing custom of delivering letters from neighbor to neighbor; the law undertook to compel the planters to be still more neighborly. The colony of New York established a monthly mail to Boston, as early as 1672.

English Supervision. — The English government did nothing for the postal system in America until 1704, when the office of postmaster-general for America was created. A law of Parliament regulated the rates in America. Not much was done towards the development of an efficient postal system until Benjamin Franklin was made deputy postmaster-general, in 1753.

Franklin as Postmaster-General. — Franklin had for many years been postmaster of Philadelphia. He visited nearly all the offices then in the country, and so improved the service that, in a short time, the revenues paid all expenses, and furnished a surplus to the British treasury. For twenty years the business prospered in his hands; but on account of his active opposition to English tyranny, he was removed from office in 1774. With the removal of Franklin, the English system collapsed, and postal business for a time was kept up only by private arrangement.

Congress takes Control. — In 1775 the Continental Congress appointed a committee to devise a postal system for the colonies. Franklin was unanimously chosen Postmaster-General. When the United Colonies became the United States of America, by adopting the Declaration of Independence, in July, 1776, there had been in actual operation for the space of one year a general postal system. The Articles of Confederation, adopted near the close of the Revolutionary War, recognized the maintenance of the postal system as a part of the business of Congress. When the Constitution was adopted, in 1789, Congress recognized the Post-office Department as already existing. No formal statute was ever passed creating this department. In 1829 Jackson first invited the Postmaster-General into the Cabinet. The Post-office Department, although the oldest in the government, was the last except the Department of the Interior and the Department of Agriculture to be represented in the Cabinet.

It is difficult now to get into any place in the civilized world where it is not possible, for a trifling sum,

to communicate with friends by letters promptly carried and delivered. Nearly all the civilized nations of the earth are leagued together in a postal system. The Postmaster-General, with the concurrence of the President, may make postal treaties with foreign countries.

Division of the Business. — It is not possible to give the exact number of post-offices in the United States. The number of postmasters is not far from 60,000. For the management of this vast business, the Postmaster-General has associated with him three assistants, and the work is systematized and divided between them. If one has a question about scales or the weight of mail matter, he corresponds with the first assistant Postmaster-General. If the question relate to a contract for carrying the mail, the correspondence is with the second assistant; while the third assistant attends to the business of furnishing stamps, envelopes, and other materials.

Officers in the postal service secure their places by appointment. The more important places are filled by the President; others by the Postmaster-General or the subordinate officers. In the offices where large numbers are employed, the appointments are made by competitive examinations.

Salaries. — The highest salary in the postal service is $8,000. This is the amount received by the Postmaster-General, and by the postmaster of New York. The compensation of other postmasters is graded, according to the business of the office, from $4,000 down to less than $5.

Classification of Mail Matter. — Under our present laws there are four classes of mail matter. The *first* class consists of written matter, and matter in sealed

envelopes, or sealed packages. The rate of postage is two cents for each ounce or fraction thereof. The *second* class consists chiefly of newspapers and magazines. To encourage the diffusion of news, these are carried from the office of publication at the rate of one cent a pound. It sometimes happens that the mailing of a newspaper by a person who is not the publisher costs as much as the subscription price including the postage. The *third* class includes all other printed matter, and the rate is one cent for every two ounces. Under the head of *fourth* class may be found various sorts of merchandise, and the rate is one cent an ounce.

Competition with Private Business. — There has been a tendency in the postal service to widen its sphere. In ancient times the flying post-rider carried nothing but messages of the government. When the government assumed the business of carrying private messages, it was brought into competition with private individuals who were doing the same business. Then the government took the monopoly, in order to be able to give to the entire country a uniform, cheap, and efficient mail service. Men could make a fortune by carrying the mail between New York and Philadelphia at government rates. The government does not allow private individuals to compete in the carrying of letters; but if you wish to send a book or an article of merchandise, you may take your choice between the postal service and an express company. There is, therefore, still some competition between the government and the express companies. The government is also engaged in the manufacture of envelopes, and thus comes into competition with another branch of private

business. Banks furnish accommodations for the sending of money to distant places. The government provides for registering letters, and opens a money order department, and thus competes with the banks in this business. In England, greatly to the convenience of the people, the government has provided postal savings banks. The English have likewise a system of postal telegraphy. It is not unlikely that both of these measures will early be introduced into the American postal system.

It will readily be seen that the postal business could not be done so satisfactorily by the separate states as by the federal government. It is a business which, from its very nature, involves business relations with all parts of the country and the world. It belongs therefore to general rather than to local government.



CHAPTER XXIX.

THE WAR AND THE NAVY DEPARTMENTS.

THE army and navy of the United States are small compared with those of other nations; yet they absorb a large proportion of its revenue. The military establishments of the states amount to almost nothing. The Constitution of the United States forbids the states to keep troops or ships of war in time of peace, or to "engage in war unless actually invaded, or in such imminent danger as will not admit of delay."[1] The states may keep arms, and provide for the drilling of the militia.[2]

[1] Art. I. sec. 10, cl. 3. [2] Art. I. sec. 8, cl. 16.

The regular army of the federal government serves as a national police in the territories and newly settled states. It has been frequently called into service in Indian warfare. A portion of the army is kept on duty at the various forts and arsenals of the United States.

Aid to the States. — It is expected that each state will preserve order within its own limits. In case of riot, if the sheriff be not able to quell it, it is the duty of the governor to do so with the state militia. But the state legislature or the governor, when the legislature cannot be convened, may call upon the President of the United States for aid. It then becomes the duty of the President to use sufficient force to quell the riot and restore order. There have been few instances where the aid of the federal government has been invoked to assist a state in preserving order. In the case of Dorr's Rebellion, in Rhode Island, there was a dispute as to who was the rightful governor; civil war was threatened, and the President was called upon to restore order. For several years after the Civil War, United States troops were often used to preserve order in the Southern States. In the railroad riots of 1877, the United States troops assisted Pennsylvania in preserving order.

State Aid to the Federal Government. — The President of the United States, when resistance to the federal laws becomes too formidable to be overcome by the forces at his command, may call for aid from the states most conveniently situated. It then becomes the duty of the state government to furnish such part of the state militia as may be called for. President Washington, in the time of the Whiskey Rebellion, in 1794, called upon the adjacent states; and they responded to his call. When

the state calls upon the President for aid, the federal officers retain command of the troops used. When the President calls upon a state for aid, the state militia enter the federal service, and become subject to the command of the President. At the beginning of the Civil War, President Lincoln called upon the loyal states for troops to assist in enforcing the laws of the United States. The states responded promptly, furnishing all the forces necessary to maintain the integrity of the Union.

Separate Navy Department. — In the organization of the Executive under Washington's administration, there was but one department for the army and the navy. A separate department for the navy was created in 1798. The secretaries of these departments are members of the Cabinet. They have the general care of all the property and persons connected with the service of the army and the navy.

Various kinds of governmental business are connected with these departments besides their strictly military work. During a part of our history the Indian affairs were in the hands of the War Department.

The Signal Service. — It is often desirable, on the field of battle, to communicate more rapidly with the different parts of the field than can be done by means of messengers. A system of signals has therefore been adopted, by which information may be sent instantly as far as they can be seen. The electric telegraph is also used wherever practicable. To train a class of men, and make them efficient in the duties of the signal service, a school has been established at Fort Whipple in Virginia. One of the early uses of the signal service

was to give notice to military commanders of an approaching storm. To this end it was natural that threatening conditions of the atmosphere should be noticed and reported. Similar observations were taken at the various light-houses and life-saving stations; and storm signals were put out, when necessary, to warn ship-masters.

Meteorological Bureau. — From these beginnings there has grown up, in connection with the signal service, a Meteorological Bureau. There are nearly two hundred stations, in the various parts of the country, where careful observations are made; and three times each day, at almost the same instant, reports are sent to the central office at Washington. From the study of these reports, the probable changes in the weather for the next twenty-four hours are made out for the different parts of the country, and the news is published by bulletins in the daily papers and elsewhere. From the central office orders are sent to display warning signals at such ports as are threatened with a dangerous storm. Bulletins are displayed in some post-offices, for the benefit of farmers, in planning their work and saving their crops.

The signal service takes notice also of the tides on the coast, and the rise and fall of lakes and rivers. Thus the people are forewarned of an approaching flood.

By co-operation with weather observers of other countries, the science of meteorology is being rapidly advanced. This service, which had its origin in the destructive arts of war, has come to be most salutary in the arts of peace, and, incidentally, has become a link in uniting nations.

Other Aids to the Arts of Peace. — Another illustration of the way in which the military service has come to be useful in non-military pursuits, is found in the engineer corps. War demands the most skilful engineering; for it includes the making of arms, ships of war, forts, bridges, and railroads. These things, and many others, have to be done with great expedition and efficiency.

The trained officials which the government supports primarily for war have been found useful for other purposes. When the city of Washington needed a water supply, the engineers of the War Department planned and constructed the great aqueduct. The chief engineer of the War Department has charge of the public buildings and grounds in the District of Columbia. Military engineers are constantly employed upon the rivers and harbors of the country. Bridges have been built primarily for the use of the army, but incidentally for the benefit of others. Public surveys are made, and maps are constructed, which add to our knowledge of geography. The Bureau of Navigation is maintained ostensibly for the benefit of the United States Navy; but it probably renders its most important service to commerce and science. In a similar way the practice of medicine and surgery in the army and navy is made to contribute largely to the general science of medicine.

CHAPTER XXX.

THE INTERIOR DEPARTMENT.

PREVIOUS to the year 1849, the government of our Indian tribes, the government of our territories, the disposition of public lands, and various other matters pertaining to internal administration, were attended to by the State Department. To relieve it of all such matters, the Interior Department was organized by act of Congress in 1849. If one wishes to get a patent upon some invention, he corresponds with the Commissioner of Patents, in the Interior Department. If he wishes to secure a pension, he corresponds with a Commissioner of Pensions, in the same department. Information about schools of learning in all parts of the world may be obtained from its Bureau of Education. If the crops are threatened with destruction by insects, there is in this department an Entomological Commissioner, whose business it is to suggest ways and means for saving the crops from their ravages.

The census office is attached to the Department of the Interior. It has charge also of a hospital for the insane of the army and navy, a college for deaf-mutes, and hospitals for the sick.

From the date of the organization of the Department, the Secretary of the Interior has been a member of the President's Cabinet. Part of the business of the Department will, in the natural course of events, pass away. If the territories should all become states, as they are likely to do, then the Interior Department would have

no farther care for their government. If the Indian tribes should cease to exist, and the Indians should come to be treated as citizens, the Interior Department would be relieved from all care for their government. As fast as the public domain passes into the hands of private individuals, or into the hands of states, the department ceases to have anything to do with the land. Other kinds of business, however, will increase in amount and in importance.

Land Surveys. — The Department of the Interior has charge of the public lands until they become the property of individuals or of states. Before land can be sold to individuals, it is necessary that boundaries be accurately fixed. For this purpose, a system of land surveys was adopted during Washington's administration.

Townships. — The honor of devising our admirable system of United States surveys has been attributed to Thomas Hutchins, first Geographer of the United States. According to this system, the land is first divided into squares by meridians and parallels, six miles apart. These squares are called *townships*, and serve the double purpose of locating land and of furnishing the boundaries for local governments. A row of townships running north and south is called a *range*. As civil governments, townships receive proper names, as Washington or Madison; but for the location of lands they are designated by numbers.

Principal Meridians and Base Lines. — The surveyors begin their work by selecting some natural object, easily distinguished; and from this, as an *initial point*, they mark off, north and south, a true meridian, called in the system a *principal meridian*. Crossing the prin-

cipal meridian at right angles, they establish a true parallel, called the *base line*. Upon each of these lines the surveyors leave marks, a half-mile apart, throughout the entire length.

Range lines are run north and south six miles apart on either side of the principal meridian. These lines and the ranges of townships they mark off, are numbered east or west from the principal meridian. Range

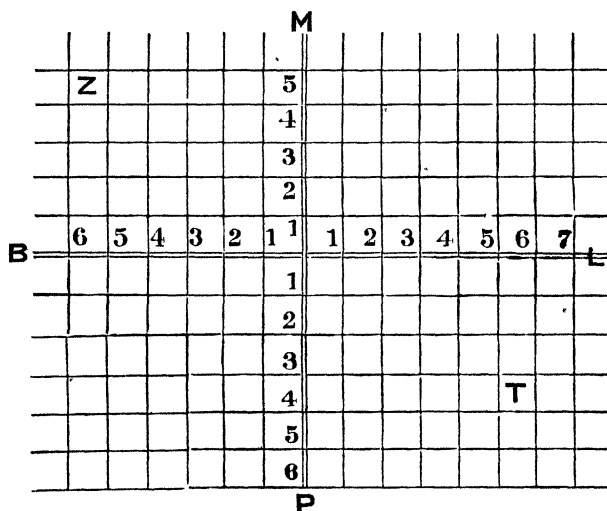


FIG. 3.

P. M. = Principal Meridian; B. L. = Base Line. The numbers on the base line mark the range lines; the numbers on the principal meridian mark the township lines. Z is in range 6 west, and is in township 5 north; T is in range 6 east, and in township 4 south.

16 west means either a line 96 miles west from the principal meridian, or the adjoining range of townships. R. 20 east is the 20th range east, or the 20th range line, 20 × 6 = 120 miles east, from the principal meridian.

Township lines are run six miles apart, parallel with the base line. They are numbered north or south from the base line. Township No. 12 S. means a township whose south line is situated 72 miles south of the base line.

The annexed diagram (Fig. 3) may serve to explain the system. The range lines are meridians; the township lines are parallels of latitude.

Correction Lines. — If the surveys are accurately made, the township lines are just six miles apart throughout. But since the range lines run north and south, they are not parallel, but converge towards the pole of the earth's axis. Two lines, in latitude 42° north, starting six miles apart, and running due north six miles, will be about three rods nearer together than at the starting points. Range lines start six miles apart at the base line; consequently, north of the base line they are less than six miles apart. In latitude 42°, at the distance of 60 miles from the base line, the township lacks 30 rods of being six miles east and west. To prevent this narrowing process from destroying the system, the surveyors measure out from the principal meridian, and establish a new base line, called a *correction line*, as indicated in Fig. 4.

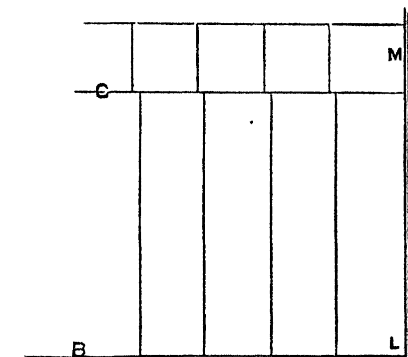


FIG. 4.

Sections. — Each township is subdivided into thirty-six sections, as indicated in Fig. 5.

A section contains 640 acres. The surveyors begin at the southeast corner of the township to mark the boundaries of the sections. If the work is accurate, all the sections are perfect except those on the west side; these are always imperfect, or "fractional." On the north side also it generally happens that, on account of inaccuracies, the survey of the sections does not correspond with the township survey; hence, a lot on the north side of the township is generally fractional, containing more or less than the ordinary quantity.

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Fig. 5.

The United States survey ends with the location of the section lines. Marks are made by the surveyors at the corners of the sections, and also half-mile marks between the corners. Purchasers measure from these marks to determine the situation of their land.

The government sells the land in lots of 40 acres, or multiples thereof. In each section there are 16 of these lots, as indicated in Fig. 6.

Lots A, B, C, and D, taken together, are one-fourth of the entire section, and are described as N. E. ¼ of Section 9. A alone is described as N. E. ¼ of N. E. ¼ of

Section 9. E is S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Section 9. E and F together are described as S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Section 9.

The following is the complete description of 160 acres of land, according to the United States survey: "The southeast one-fourth (S. E. $\frac{1}{4}$) of section number nine (9) in township eighty-one (81) north; range eighteen (18) west of the fifth principal meridian." The fifth P.M. runs near Dubuque, Iowa. Range 18 is $18 \times 6 = 108$ miles west of Dubuque. The base line of this survey runs near Little Rock, Ark. Township 81 is therefore, on its north boundary, $81 \times 6 = 486$ miles north of Little Rock. Having by these numbers found the township, it will be seen by reference to Fig. 5 that the southeast corner of Section 9 is three miles from the township line east or west, and two miles from the north line. By means of this simple system, any lot of land may be conveniently located.

		B	A
		C	D
E	F		

FIG. 6.—SEC. 9.

CHAPTER XXXI.

OTHER FEDERAL MATTERS.

Department of Justice.—The Attorney General of the United States and the corresponding officers in the various states are usually classed as judicial rather than executive officers. The Attorney General is however

a member of the President's Cabinet. He gives advice on questions of law to the President and the heads of departments. He is assisted in his judicial business by a Solicitor General and the Assistant Attorney General.

These officers appear on behalf of the United States in the court of claims and in other courts when needed for the interests of the government. The Attorney General has a supervisory control over the United States attorneys, marshals, and clerks, who are connected with the United States courts.

Agricultural Department. — From the beginning of our history the diplomatic and consular agents of the government have been in the habit of collecting information for the benefit of our agricultural interests. Seeds and plants have likewise been procured, and experimental stations have been established to test their value and to conduct other agricultural experiments. Officers of the government have tested various methods of manufacturing sugar from sorghum and from beets. The diseases of domestic animals and the insects which destroy crops have been investigated, to discover means of protection. The information thus collected has been published for distribution among farmers. This work in their interest was first in the hands of the Department of State, later in those of the Department of the Interior, then in the hands of an independent Commissioner of Agriculture; and in 1888 the Department of Agriculture was elevated to Cabinet rank, and a Secretary of Agriculture was appointed.

The Smithsonian Institution. — In 1829 Mr. James Smithson, an Englishman, died, leaving property under

certain contingencies, to the United States, to found an institution for the advancement and diffusion of knowledge. From this bequest more than a half-million of dollars were paid over to the United States. The trust was accepted by act of Congress in July, 1836, and in 1846 the Smithsonian Institution was founded. The management of the institution and the administration of its income is placed by act of Congress in the hands of a board of regents, consisting of the Chief Justice of the United States, the Vice-President, three Senators appointed by the Vice-President, three Representatives appointed by the Speaker of the House, and six citizens chosen by joint resolution of the two houses of Congress. Besides the board of regents, the establishment has other members, including the President of the United States, Cabinet officers, and the Commissioner of Patents. The fund is borrowed by the government and an annual interest of six per cent is paid to the institution. The original fund has increased to $1,000,000 by savings from the income.

Business of the Institution.—In accordance with the terms of the bequest, a part of the income is expended to promote the increase of knowledge and a part for its diffusion. To promote the increase of knowledge, rewards are offered to stimulate research, and men are employed to conduct investigations in various departments of learning. Knowledge is diffused by three series of publications: 1, contributions to knowledge; 2, miscellaneous collections; 3, annual reports. The annual reports are published and distributed at the expense of the government. For many years the institution conducted investigations in meteorology. This

work has now passed into the hands of the signal service bureau of the War Department.

The National Museum. — The buildings of the Smithsonian Institution are made the repository of the National Museum, and the Secretary of the Institution is its curator. For a time funds of the Institution were expended in the collection of specimens. At present the museum is maintained entirely by appropriations from Congress.

The Interstate Commerce Commission. — In 1889 there were twenty-seven states which had chosen railroad commissioners, to carry into effect state laws concerning railways. In nine of these states the commissioners were empowered to fix fares and freight rates, and to enforce the observance of their regulations. But a state can exercise no control over a railway beyond its limits. In 1887 Congress, therefore, passed a law to regulate interstate commerce, and the enforcement of this law was placed in the hands of five commissioners, appointed by the President with the approval of the Senate. This commission is not connected with any of the departments of the executive.



CHAPTER XXXII.

LEGISLATION.

The Legislature and Executive compared in Number. — In the two houses of Congress there are only a little more than four hundred legislators. As has been shown in a former chapter, there are engaged

in the execution of their laws about 200,000 persons. A few score of men, met together in a state legislature once in two years, may in a few weeks make all the laws for the government of a great state; yet, in the administration of these laws, thousands may be constantly employed. Congress might in a few weeks perfect a law for postal telegraphy. To work the system would take thousands of officials forever after. It requires few men to make the laws; it requires multitudes to execute them. A good law once made, is made for all time, or until circumstances change. Much of the time of legislatures is consumed in determining what are good laws. If citizens were agreed upon them, the work of legislation would be even less than it is.

Legislative Business. — The general scope of legislative business may be learned from what has been said in former chapters. The number of federal courts, the number of judges and their pay, the sort of business which comes before them, and the method of procedure where not fixed by the text of the Constitution, are all determined by laws of Congress.

We may learn still farther what Congress has done, by noticing what the President and his Cabinet and the thousands of federal officers are doing in the work of administration. They are all carrying into effect the laws of Congress; their compensation and the method of entering office are determined by law. What a state legislature has done is learned by noticing state institutions and their method of management, the organization and government of counties, cities, towns, townships, and school districts, and the organization and proceedings of the system of state courts. Nearly all official

acts of state and local officers are performed in accordance with laws passed by the state legislature.

Financiering. — We are still living under many of the laws passed during Washington's administration. In each state many of the laws made by the first legislature are still in force; but there is one duty laid upon Congress and the state legislatures which must be repeated and, in a certain sense, performed anew at each session. At each session the legislature must appropriate money to meet the expenses of the government for the period between the terms. Perfect financiering would result in such an adjustment of the income and the expenditure of the government, that the one would at all times balance the other. The government, by having at one time a large surplus idle in the treasury, and at another an empty treasury unable to meet its obligations, may inflict a serious injury upon the business of the country. It is comparatively easy in the states, to adjust income and expenditure. There is ordinarily one simple source of income, and the expenditures are easily estimated; but the work of Congress is more difficult. The sources of income are numerous; the exact amount yielded from month to month is dependent upon conditions of trade which cannot be foreseen; and there are items in the expenditure which are not easily estimated. During the greater part of the time since the Civil War, Congress has been relieved from the necessity of exact financiering, on account of the existence of a public debt, to the payment of which all surplus revenues could be applied. During President Cleveland's administration, all the bonds which were due had been paid, and the income of the treasury

exceeded the expenditure by more than a hundred million dollars. Disaster was averted by purchasing at a premium bonds which were not due, and by depositing funds with banks in order to secure their return into the channels of trade.

Local Option. — In former chapters it has been shown that school districts, townships, towns, cities, and counties exercise powers of subordinate or local legislation. Town meetings, or representative bodies in these municipalities, estimate local expenses and vote a tax to meet them, and adopt and enforce various regulations, rules, and by-laws of local concern. Many projects requiring the expenditure of unusual sums of money can be authorized only by a general vote of the municipality. Besides the ordinary powers of local legislation, the state legislature often commits to counties or townships the duty of deciding specific questions, such as the restraining of domestic animals from running at large, or the destruction of noxious weeds and animals. Among questions of this sort, that which has received the largest share of attention in recent years is, whether the local governments within the state shall have the power to regulate or prohibit the liquor traffic within their limits. This is called "Local Option."

CHAPTER XXXIII.

THE CONSTITUTION AND THE LEGISLATURE.

MORE than half of the Constitution of the United States, leaving out the amendments, relates to the legislature. A large part of each state constitution is occupied with the same subject. There is a striking similarity as to form and organization between a state legislature and the Congress of the United States. Many important facts may be learned about the organization and the business of Congress, by reading over the first half of the Constitution.

Basis of Representation. — Two senators are sent from each state. In the Senate the smallest or the least populous state has equal representation with the most populous. The first House of Representatives had sixty-five members, the number for each state being prescribed by the Constitution. Since the first census, the apportionment of the representatives among the states has been according to the population. As the Constitution was first framed, all *freemen*, except Indians not taxed, were counted, including those held to service for a term of years, as apprentices and convicts, and to these were added three-fifths of the slaves.[1] By the thirteenth amendment abolishing slavery, and the fourteenth amendment requiring enfranchised negroes to be counted, and the fifteenth amendment, which confers the franchise upon all freedmen, it has come about that all persons in the states, except Indians not taxed,

[1] Art. I. sec. 2, cl. 3.

are now counted in determining the number of representatives.

Apportioning Representatives among the States. — After the taking of the census, Congress is required by the Constitution to apportion the members of the House on the basis of population, each state having at least one member. The law of 1792 gave to each state one member for each 33,000 of its population. On this basis, there were in all 105 members. In 1803 the same ratio continued, and made the whole number 141. In 1813 the ratio was changed to one for every 35,000. This gave the House 181 members. A ratio of 40,000 to one representative in 1823, gave 212 members. A ratio of 47,500 in 1833 gave 240 members. Previous to 1842, no account was taken of fractional parts of the ratio. In that year the law fixed the ratio at one member for every 70,680 people, and provided that an additional member should be given to each state where there was a fractional remainder of more than half of the ratio. At this time the members were reduced to 223. After the census of 1850, a new plan was adopted, which has been followed since, of first deciding how many members shall constitute the House, and then dividing the entire population by this number to find the ratio of representation. The population of each state is divided by the ratio thus found, and if the sum of the quotients do not equal the number fixed for the House, additional members are assigned to the states having the largest remainders, until the required number is complete. After 1880 the number of members of the House was fixed at 325. The entire population as

found by the census being divided by that number, gave a quotient of 151,911.

Members from Territories. — The Constitution says nothing about representatives from territories, but it gives to Congress power to "make all needful rules and regulations respecting the territory or other property belonging to the United States."[1] Among the rules which Congress has chosen to make, is a law permitting each organized territory to send to the House of Representatives one delegate, who has a right to take part in the debates, but has no vote. The representatives from territories are expected to inform the House of the needs of their constituents.

Representative Districts. — The Constitution requires both senators and representatives to reside in the state from which they are sent.[2] Senators, being chosen by the state legislature, are looked upon as representing the entire state. It has been the habit of state legislatures from the beginning to divide the state into as many districts as there are representatives, and to allow each district to elect one member. In 1872 Congress passed a law requiring the states to be thus divided. The law, however, made provision that in case additional members were assigned to a state on a new apportionment, these might be chosen, in the first instance, from the state at large. There is nothing in the law or the Constitution which requires a representative to be chosen from the inhabitants of the district; but nearly all representatives do reside in the district which elects them. In Great Britain there is no such custom. Any member of the House of Commons may be chosen

[1] Art. IV. sec. 3. [2] Art. I. sec. 2, cl. 2, and sec 3, cl. 3.

from any district in England, Wales, Scotland, or Ireland. An English statesman who wins a national reputation may be sure of a seat in the House of Commons. If defeated in one district he is invited to become a candidate in another.

Sessions of Congress. — Representatives are elected in each year designated by an even number. Their term of office begins on March 4 of the following year, and continues two years. It covers two of the annual sessions of Congress, which begin on the first Monday in December. The first of these sessions may last a year, but the second must close by March 4, at midnight, when the term expires. They are popularly designated as the long and the short sessions. Representatives do not take their seats until more than a year after they are elected unless convened earlier in extra session. That is, the members chosen in November, 1888, will take their seats for the first time in December, 1889. It has been proposed to have the terms begin and close on some other day, as April 30.

There is a new Congress every two years, though only one-third of the senators are newly elected. The Congresses have been numbered from the beginning. The 50th Congress closed the first century of the Constitution, the 40th ended in 1869. The date of the laws and the documents of Congress is often indicated by the number and session of the Congress. "XL., I." means the session which began March 4, and ended December 2, 1867, being an extra session.

Officers of the two Houses. — The Constitution gives to each house the power to choose its own officers, but, except in the case of the presiding officers, it does

not name the officers or define their duties. Each house has scores of officers with their assistants, the most important of whom are: 1. In the Senate a secretary, and in the House a clerk, who serve as chief ministerial agents of their respective houses, and officially communicate their acts. 2. A sergeant-at-arms in each house, who assists in the preservation of order. 3. A door-keeper, who has the care of the room in which the meeting of the house is held. 4. A chaplain who opens each daily session with prayer.

The President pro tempore. — The Vice-President is made by the Constitution the presiding officer of the Senate. In his absence the Senate is empowered to choose a president *pro tempore.* It is customary early in the session for the Vice-President to leave the room, while the Senate proceeds to elect a president *pro tempore* as a permanent officer; then, if at any time the Vice-President is absent, the business of the Senate is not interrupted for an election. When the office of Vice-President becomes vacant, the president *pro tempore* receives the same salary as the Vice-President, and he is often improperly called the Vice-President. The Vice-President is not a senator, and he has no vote except in case of a tie. A president *pro tempore* is a senator, and he has his regular vote on every question. In case of a tie he has no extra vote.

The Speaker of the House. — From the text of the Constitution we learn that the presiding officer in the House is called "speaker,"[1] after the analogy of the House of Commons. The Constitution gives no idea of the powers and duties of this officer. It does not even

[1] Art. I. sec. 2, cl. 5.

determine whether he is a member of the House. Custom and the rules of the House have made the speaker's position inferior to none in the government in power and influence. In the first Congress the House chose one of its own members as speaker, and a rule was passed that, unless otherwise ordered, the speaker should name the committees of the House.

CHAPTER XXXIV.

METHODS OF CONDUCTING BUSINESS.

Legislation by Committees. — The number of members being at first small, the House for many years met in a small room, and during much of that time the quantity of business to be transacted was not great. While these conditions existed, the House as a whole had a large share in the work of making laws. But as the House has increased in size, and the business has greatly increased, and the sessions are now held in a room too large for effective speaking, it has become more and more customary to legislate by means of committees.

The Speaker and the Committees. — The speaker is usually a leading member of the political party having a majority in the House. Having been elected at the first assembly of the House, one of his earliest duties is to name the standing committees. These have special charge of different kinds of business. They are more than fifty in number, and each committee is composed of from three to fifteen members. It is expected that

every member will have a place on some committee, and often the same member serves on several committees at once. The positions of chairmen are given to the men of influence in the speaker's own party, but usually each committee has on it men from both parties. The entire course of legislation is largely determined by the way in which the committees are made up.

What the Committees do. — On Monday of each week a roll of the states is called, for the introduction of bills. Any member may bring in a bill, and it is referred to the appropriate committee. During the year from six to eight thousand bills are thus referred. Most of them are never heard of again. Some bills which meet with a committee's approval are taken up, discussed in secret session, sometimes are made the subject of conference with parties interested, are worked over, changed, and in time reported back to the House with the recommendation that they pass. If bills which suit their views are not proposed by other members, they frame bills themselves, and secure their introduction and reference. Each committee thus prepares certain bills which they are anxious to have enacted into laws.

Committees before the House. — On an average about two hours per year of the time of Congress may be allowed to each committee to secure action upon its reports. Two hours is a short time to discuss even one bill. It is not possible that many should be acted upon in any other than a formal way. They pass without being understood by the great body of members. The committees are generally the only members intimately acquainted with a bill. The chairman of the committee, having an hour at his disposal, usually occupies a part

of the time himself and distributes the remainder to such other members as he wishes to have speak, including some who are opposed to the measure. The speaker "recognizes" only such members as the committee have selected to speak.

Appropriation Bills and Revenue Bills.— The rules of the houses of Congress require that before a bill becomes a law it shall pass three separate readings on three distinct days. The first reading is when the bill is introduced and referred to a committee. At this time there is rarely any opposition or discussion. The second reading is when the committee reports the bill back to the House, with the recommendation that it pass or that it do not pass. If the bill is discussed at any time, it is usually at the second reading. If it is a matter of general interest the House may go into committee of the whole, in which case the speaker calls some other member to the chair, and the assembly proceeds by less formal rules to review the measure and consider amendments. At the third reading there is usually little discussion or amendment. The Constitution makes the House of Representatives the source of all bills for raising revenue.[1] The committee of ways and means has charge of revenue bills. A rule of the House requires that all bills reported by this committee and those reported by the committee on appropriations be considered in committee of the whole House. This makes it more difficult for bills of this character to be passed without a knowledge of their contents.

It thus appears that the House, instead of being one compact body, working together in the making of laws,

[1] Art. I. sec. 7, cl. 1.

is broken up into more than fifty bodies; and only a very limited number of the laws which it enacts receive the attention of the entire House.

The Senate Committees. — The standing committees in the Senate are not so numerous as those in the House. They are not chosen by the presiding officer, but are elected by vote of the Senate. The political party having a majority is thus enabled to control the organization of the committees. The Senate committees have less power than those of the House. The Senate is a smaller body, and occupies a smaller room. A much larger proportion of the senators become acquainted with the work of its committees, and take part in reviewing their action.

Co-operation of the two Houses. — All bills except revenue bills may originate in either of the two houses. When a bill has passed the third reading in the house in which it originated, it is carried to the other house, and is there subjected to a like process. It is read a first time and referred to a committee; it is reported back to the house and read a second time; it may be amended in committee or in the house; it is read a third time and passed. If the bill has suffered no amendment it goes at once to the President for his signature. If it has been amended it goes back to the house in which it originated. If the house accepts the amendments of the other chamber then the bill goes to the President. It often happens that the two houses have difficulty in agreeing as to the form of the bill. In that case a committee of conference is named by each house, and the two committees seek to agree upon a compromise to recommend to the two houses. It is

not until the two houses adopt the same form that the bill is presented to the President. A "bill" becomes an "act" or "law" when it is signed by the President, or is passed by a two-thirds vote of each house over his veto, or has been kept by him ten working days while Congress is in session.

Senatorial Executive Business. — The Senate has a large amount of so-called executive business. Many of the appointments made by the President require the approval of the Senate. Treaties are negotiated by the President or by persons appointed by him, but before they go into effect they must receive the approval of two-thirds of the Senate. While attending to business of this character the Senate sits with closed doors.

Impeachments. — The word impeach is often used inaccurately, as when it is said that Congress tried to impeach Andrew Johnson, but failed. The House of Representatives did impeach President Johnson; that is, it preferred charges against him and arraigned him before the Senate for trial. This is all that is meant by impeachment. Impeachment may be compared to an indictment. If an indicted person is acquitted in the trial, we do not say that the grand jury failed to indict. What the House failed to do in the case of President Johnson was to get the Senate to convict him. The impeachment was voted by a large majority in the House. An able committee of the House conducted the prosecution before the Senate, who, according to the Constitution, "have the sole power to try all impeachments."[1] To convict requires a vote of two-thirds of the members present. In the case of Mr.

[1] Art. I. sec. 3, cl. 6.

Johnson there was lacking one vote of the necessary two-thirds.

There have been thus far, besides the case of Andrew Johnson, six instances of impeachment in Congress. Four of those impeached were judges in the federal courts; one was a Cabinet officer; one, a United States senator. Of the seven only two have been convicted. In 1862 a federal district judge in Kentucky was impeached for aiding in the Rebellion. He was convicted, removed from office, and disqualified from again holding office under the United States. This is the extreme penalty allowed by the Constitution.

"Lobby Members." — The rooms surrounding the legislative chambers are called lobbies. Members of the Legislature are accustomed to retire there for conversation and to meet their friends. The Constitution recognizes the right of petition for a redress of grievances.[1] As ordinarily understood, a petition is a written request presented to the entire House. The legislature can often be moved more effectively by private interviews with the few members who have control of the matter of interest. Railroad companies, manufacturers, and men engaged in other industries which may be benefited or injured by changes in the laws; states, cities or other bodies desiring appropriations for some public improvement; reformers, and all other classes who are anxious to secure some legislation, are accustomed, instead of relying upon open petition to Congress, to employ men and women, who are skilled in the art of influencing legislators. Multitudes of these are supported in Washington, some with higher salaries

[1] Amendment I.

than members of Congress. They are known as members of the lobby, or the "third chamber." Some men of talent continue long in this work. The fact that so large a share of legislation is by means of committees sitting in secret is peculiarly favorable to the power of a lobbyist.

Political Parties in England. — Congress has always been the chief source and centre of party life. A private meeting of members of one political party for conference is called a Congressional Caucus. It is by means of the caucus that each party is enabled to keep its members in harmony in the two houses. In the English Parliament, the parties are kept in harmonious action through the agency of the Cabinet. The Cabinet, is called the "government." Members of the political party which for the time is in the majority and supports the government, sit together at the right of the speaker, the members of the Cabinet occupying the front bench. The front bench on the left is occupied by the recognized leaders of the opposition, and other members of the party in opposition sit on the same side of the chamber. All important bills, especially all bills involving party issues, are introduced by the Cabinet. The line of action of the party in opposition is determined by its recognized leaders. The members of the party are seldom left in doubt as to the position of their party.

Parties in Congress. — In the Congress of the United States there is no cabinet; there is usually no distinct party committed to the support of the government. It often happens that the President and the majority in one or both houses of Congress are of opposite parties.

There are often no recognized leaders of the parties in Congress. Bills are reported from committees made up of members of both parties. It often happens that a member cannot tell how he should vote in order to harmonize with his party. The great body are in doubt as to what should be the attitude of their party. In such a case Congress may adjourn in order that the members of each party may meet in caucus and decide what they will do. The meeting is held with closed doors, and usually all who go into caucus abide by its decision. The effort of the caucus is to adopt some line of policy in which all the party will unite.

At the beginning of each Congress the seats are distributed among the members, the right of prior choice being determined by lot. It is customary for the Democrats to select the seats on the right of the presiding officer, and for the Republicans to occupy those on the left; but there is no sharply drawn line of division as in the English Parliament.

PART V

CONSTITUTIONS.



CHAPTER XXXV.

GENERAL DESCRIPTION OF THE CONSTITUTION.

Constitution Defined. — In a broad sense of the word, every government has a constitution; that is, an understanding or customary way by which its parts work together. But the title usually implies also that the arrangement is stable, and is not dependent upon any one man. An absolute monarchy is called a government without a constitution, while a limited monarchy is called a government with a constitution. The English monarchy has always been limited or constitutional. The constitution of England is the combination of customs, laws, and understandings, in accordance with which the different classes enjoy their rights and privileges, and the various parts of the government are kept in harmonious action. In American politics the term is most frequently used of the written frame of government, either of the nation or of some state. Japan has recently changed from an absolute to a constitutional monarchy, under a written constitution.

Constitutional Checks. — The government of the United States is remarkable for the number and effi-

ciency of the constitutional checks upon the power of majorities. In case of the federal government: 1. A bill which has received the sanction of a majority in one house of Congress, but fails of the approval of the other house, is effectually defeated. 2. Though approved by both houses it may be defeated by the President's veto. 3. In rare instances a President, after a measure has been passed over his veto, has refused to execute it, because he believed it to be in conflict with the Constitution. In such a case the measure could have no effect until a President was elected who would enforce it. 4. When an act is enforced by the executive, a case may be brought in the federal courts, and these may decide that it is unconstitutional and therefore void. 5. It is still possible to change the Constitution; but to do this requires the approval of two-thirds of both houses of Congress and the sanction of a majority of three-fourths of the state legislatures. In the states the system of checks is quite similar. In some of them the veto power of the governor is greater, and in others it is less, than that of the President, and in still others there is no veto power. In New York it is greater in two respects: the governor may veto a part of a bill appropriating money and approve the rest; and he is allowed thirty days in which he may veto bills passed during the last ten days of the session. The courts of a state may rule that a law is void because it conflicts with either the state constitution or the United States Constitution; or the federal courts may hold it void because in conflict with the Constitution of the United States. If it is the state constitution which stands in the way, it may be changed in most

states by a majority of each of the two houses of the legislature, the change being ratified by a majority of the voters of the state. Further delay is secured in some states by requiring the sanction of two legislatures before the amendment can be submitted to the people.

Source of Authority. — From the foregoing paragraphs it will be observed that all the various agencies of government are subject to the authority of the Constitution. The Supreme Court of the United States is the final interpreter of the Federal Constitution and of all state constitutions, laws, and acts which may be held to conflict with it. But the Constitution itself derives its authority from the people.

The convention which framed the Federal Constitution spoke in the name of the people. The acts of the convention became binding when accepted and ratified by the people. The constitution of a state has a similar origin. A convention representing the people forms a constitution, which, when ratified by the people, goes into operation on the retirement of previous authorities. Nearly all the older states have displaced the constitutions first formed by the adoption of new ones. Some of the state constitutions direct the calling of a convention to revise the constitution at certain stated periods. The Federal Constitution requires Congress, on the application of two-thirds of the states, to call a national convention for proposing amendments to the Constitution, but such a convention has never been called.

CHAPTER XXXVI.

SOME EXPLANATIONS OF WRITTEN CONSTITUTIONS.

ALL that has been said thus far may be viewed as explanatory of the state and Federal constitutions. These are best understood in the light of what the various governmental agencies are doing.

Frame of Government for Counties and Townships. — In the constitution of West Virginia, adopted in 1863, there is a complete frame of government for counties and townships. Under such a constitution, the government of the township rests upon the same authority as the general government of the state. In other states the constitution makes it the duty of the legislature to provide a frame of government for counties and townships. If nothing is said in the constitution, the legislature has full power over all local municipalities.

Organization of Courts. — Every state constitution provides for the organization of the Supreme Court, or a court of highest jurisdiction, and nearly all for courts of an inferior grade; but there is great variety among the constitutions as to these regulations. Some leave nearly all details to the legislature; others contain a large body of rules for the organization of courts. The constitution of Iowa, adopted in 1857, provided for one Supreme Court and eleven district courts. The legislature was forbidden to increase the number of district courts more rapidly than by adding one in four years. The population increased so fast that in a few years it

was impossible for the district judges to transact the judicial business. The legislature relieved these judges by requiring each judicial district to elect a "circuit judge," and to this court was given all probate business formerly in the hands of the district court, and equal and concurrent jurisdiction in all civil cases. Later an amendment was carried giving to the legislature full power to fix the number of the judges.

"The Legislature shall have Power." — The statements in the Federal Constitution that Congress shall have power to do certain things are of the utmost importance, because the courts hold that Congress can exercise only such powers as are conferred by the Constitution. Such a provision in a state constitution is usually of no effect, unless it modifies the meaning of some other clause. The constitution of Texas, of 1845, contains the provision that the legislature shall have power to exempt from taxation two hundred and fifty dollars' worth of household goods for each family. But the legislature had that power without the words. If the Constitution should say, "The legislature shall have power to coin money," the words would have no force, because in conflict with the Federal Constitution. All state constitutions declare who may vote. A clause giving to the legislature power to change the provisions in certain particulars has a real value. If the Constitution should simply say, "All male citizens over twenty-one years of age shall have a right to vote," and a statute should provide that one convicted of a certain crime shall not vote, the plea might be made that the law was in conflict with the Constitution. But there would be no ground for the plea if the Constitution

said also that the legislature should have power to deprive by law of the right to vote those convicted of crime. In cases where the Constitution makes a partial provision, and leaves the legislature to complete or modify it, this may be indicated by a clause conferring power. Or, if the Constitution has deprived the legislature of power, it may be restored by an amendment bestowing the power.

Commands upon the Legislature. — Some of the clauses in the constitutions, which say that the legislature shall have power to do a certain thing, are apparently intended to indicate the duty of the legislature. All the state constitutions abound in commands and directions to the legislature. Some have classed these directions among the useless parts of the constitutions, since, it is maintained, there is no way to compel the legislature to act. It is true, legislators who take an oath to support the Constitution, often disregard some of its commands. Provisions which the people have forgotten, or care nothing for, the representatives of the people may disregard; but if a number of persons desire the thing enjoined, the constitutional requirement may make it easier to induce the legislature to act. Some of the states, without any direction in the Constitution, have established a public school system; but in a majority of cases constitutional provisions have preceded effective legislation. It is presumable that these constitutional provisions have contributed much to the stability and success of the system.

Prohibitions upon the Legislature. — The Federal Constitution contains several definite restrictions upon Congress, and a few upon the legislatures of the states,

while the various state constitutions have many additional prohibitions upon the state legislatures. The courts have uniformly ruled that an act of the legislature in violation of a constitutional prohibition is void. Besides Art. I. Sec. IX. of the Federal Constitution, which contains formal restrictions upon Congress, and Sec. X. of the same article, which restricts the states, the first ten amendments still farther limit the action of Congress, while the bills of rights in the state constitutions restrict the action of the state legislatures.

The United States Constitution as affecting States. —Some of the prohibitions upon the action of states found in Sec. X. of Art. I. are repeated in the state constitutions. The state legislature is forbidden by both constitutions to pass an *ex post facto* law. Such a provision in a state constitution is not without use. The state courts are usually the first to interpret a state law; and the prohibition in the state constitution renders it less likely that the provision in the Federal Constitution will be drawn into controversy, and thus lead to an appeal to the Federal Supreme Court.

Many of the restrictions in the Federal Constitution which are popularly understood to bind the action of states do not have that effect. The first amendment declares that "Congress shall make no law" of either of certain specified classes. The next nine amendments, which were adopted with it, should all be understood as binding upon Congress and the federal government alone, and not as restricting the action of states. Similar provisions are found in state constitutions; and these alone limit the state. The fifth amendment says that no person shall be held to answer for a capital

or otherwise infamous crime, unless on presentment or indictment of a grand jury. As interpreted by the courts, this does not restrict the action of states. A state may abolish the grand jury, and some of them have done so. Congress cannot abolish the grand jury without a previous change in the Constitution. The same reasoning holds in respect to the trial jury. The states have full power to abolish it so far as the Federal Constitution is concerned. The Constitution restricts federal officers in the matter of excessive bail and the infliction of cruel and unusual punishments. If the people of a state desire a like restriction on state officers, it should be inserted in the state constitution.

Restrictions upon the Executive and the Judiciary. — Commands or prohibitions in a constitution usually affect more directly the legislature, yet many of them bind also the executive and the judiciary. The executive as well as the legislature may be tempted to take private property for public use without just compensation. The constitutional provision that the privilege of the writ of *habeas corpus* shall not be suspended, affects especially the judiciary. It guarantees the right of the United States courts to bring before them any person deprived of liberty, and claiming that his confinement is unlawful. The issuing of the writ by state courts is guaranteed by state constitutions. Federal courts are accustomed to grant the writ of *habeas corpus* to one who is in prison under state authority, in violation of some federal law, or treaty, or right of the Federal Constitution. Federal prisoners have also been released by state judges.

CHAPTER XXXVII.

CONSTITUTIONS AND ORDINARY LAW.

The Federal Constitution. — There is little difficulty in distinguishing the provisions of the Federal Constitution from ordinary statutes. They are fundamental. A frame of government is provided, and the powers and duties of the officers are defined. The details of legislation are committed to Congress. The provision about fugitive slaves, that a person held to service or labor in one state, escaping into another "shall be delivered up on claim of the party to whom such service or labor may be due,"[1] is the nearest approach to an ordinary statute. On its authority a court might issue a warrant to take an alleged fugitive, and, on proof of ownership, might deliver him into the hands of his master. A brief statute intended to give fuller effect to this provision was passed by Congress in Washington's administration, and a very stringent fugitive slave law was passed in 1850.

In the States. — It is much more difficult to distinguish between what should be statute and what should be constitution in the states. The fundamental law provides for officers to carry on the government; it commands them to do certain things; it may confer powers upon them; it may forbid them to do certain things; it makes known the methods by which the people wish to be governed. When the constitution goes farther than this and introduces provisions to control the dealings of citizens with each other, it passes from matters fundamental

[1] Art. IV. sec. 2, cl. 3.

and enters the field of ordinary statute. It is easy to draw this distinction in theory, but it is difficult to hold to it in practice.

Some of the first constitutional conventions acted in the double capacity of legislatures and conventions; they adopted ordinances or laws for the government of the people, and they put into the constitution many provisions which are not fundamental. In the constitution of Pennsylvania, adopted in 1776, there is the statement that houses ought to be provided for punishing by hard labor those who shall be convicted of crimes not capital. "And all persons at proper time shall be permitted to see the prisoners at their labor." In the same connection, there is a clause "that the inhabitants of this state shall have liberty to fowl and hunt in seasonable times on the lands they hold, and all other lands therein not enclosed." The example set by the first conventions has been followed ever since. In almost any state constitution may be found provisions which are scarcely to be distinguished from ordinary laws.

Illinois. — The constitution of Illinois, adopted in 1870, provides for the control of banks, railroads, and warehouses. Some of its provisions take the form of directions to the legislature or restrictions upon it, which indicate that they are a part of the fundamental law; others have the form of ordinary statutes. Stockholders in a bank are made personally responsible for its debts. Banks are forbidden to suspend specie payments. Railroad corporations are required to maintain in the state a public office in which shall be kept records of the ownership and transfer of all the stock of the corporation. The rolling stock and all movables of

the railroad are declared to be personal property, and liable to seizure for debt. The owners of warehouses in cities of one hundred thousand inhabitants or more are required to make a weekly statement of the contents, and to keep a copy of the statement posted in the warehouse on which shall be noted daily the changes made in the stores; and any owner of property stored shall have access to all the books and records of the warehouse in regard to such property. Similar provisions are found in the statutes of other states instead of in their constitutions.

Railroads and State Constitutions.—In about half of the state constitutions there is some regulation concerning railroads. These provisions may be classified as follows: 1. *Powers* are conferred upon the legislature to fix rates, to establish maximum charges, and to prevent combinations. 2. *Restrictions* are placed upon the legislature. The most common of these forbids the state to loan money to a railroad corporation, and in many states this prohibition is extended to counties and other municipalities. 3. The legislature is *instructed*, *directed*, or *commanded* to make laws for the control of railroads, as, for instance, to establish maximum charges or to prevent combinations. 4. Other provisions have the form of *statutes*. Examples have been instanced in the case of Illinois. Railroad companies are sometimes forbidden to "water" their stock, or to increase it without a public notice of sixty days; or the different companies are required to connect their tracks and transfer goods and cars.

Now, what is the position of those states in which the constitutions say nothing on the subject of railroads?

1. They have all the power to control railroads possessed by any state. The words in a state constitution "the legislature shall have power" do not convey any power. Some of the states in which the constitution is silent have gone farthest and been most effective in legislative control of railroads. 2. Every restriction removes power from the legislature. If the constitution says that money shall not be loaned to a corporation, the courts would refuse to give effect to any act in violation of the restriction. In the absence of such a provision, a legislature has power to invest money in railroads, and yet can prevent a county or any municipality from doing the same. 3. When a constitution commands the legislature to make certain laws to control railroads, a legislator is by his oath under moral obligation to obey; and his constituents may appeal to him on this ground. Yet it is possible that all the members may act in good faith and still fail to pass the laws because of inability to agree. In the states having no such directions in their constitution the citizens appeal directly to the legislature for what they want. 4. A provision having the form of a statute inserted in the constitution may indirectly serve to limit the legislature. Additional laws must be in harmony with the constitution, else the courts will nullify them. If the constitution forbids combinations, or pools, the legislature cannot pass a law regulating pools. Where there are no such provisions, the legislature has a clear field, and may make, amend, or repeal laws, as seems best at the time.

From these observations, it appears that the one class of provisions in the fundamental law which is especially effective is that which deprives the legislature of power.

If the people wish to keep the legislature or the municipalities of the state from investing money in railroads, they can effectually deprive them of this power by a clause in the constitution.

Lotteries. — It was customary a hundred years ago for governments to license lotteries for public or charitable purposes. During the present century there has been a growing sentiment against lotteries, which has found expression in three-fourths of our constitutions. The first state to act in this direction was Tennessee. A clause inserted in the Constitution of 1834 reads, "The legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this state." This clause contains both a restriction and a command upon the legislature. This form is followed in many constitutions. In other states, instead of directing the legislature, the constitution itself prohibits the sale of lottery tickets. In some, the lotteries already authorized are permitted to be closed out; but the constitution of Missouri, of 1865, says, "Lotteries already authorized shall not be drawn." Louisiana is the only state which continues to authorize lotteries.

Duelling. — As explained in a former chapter, the practice of settling disputes between citizens by battle, or duel, was not only permitted, but was required by the Norman customs and laws. The duel long continued to be the legal and customary means of settling disputes affecting the honor or the character of men and women. The first state constitutions say nothing about duelling; for although without the sanction of law, yet the practice was not uncommon, and there was no

strong public sentiment against it. The growth of a hostile sentiment received constitutional notice first in the state of Mississippi, in 1817, in the following words, "The General Assembly shall have power to pass such penal laws to suppress the evil practice of duelling, extending to the disqualification from office or the tenure thereof, as they may deem expedient." Twenty-seven states have followed the example of Mississippi, in placing in the constitution some provision against duelling. These take one of the following forms: 1. The legislature is empowered to prohibit duelling. 2. It is commanded or directed to prohibit duelling. 3. The constitution itself prohibits duelling, and in several states deprives those having a part in a duel of the right to vote or hold office in the state. The constitution of Texas, ratified in 1868 and in 1876, requires all officers to take an oath that they have had no share either as principal or second in the fighting of a duel with deadly weapons.

Such provisions are most numerous in the constitutions of that part of the country where duelling has been most prevalent. There are laws in the other states also, defining and punishing the crime.

Bribery and Betting at Elections. — Nearly every state constitution contains some provision respecting bribery. Some of them empower the legislature to deprive a citizen who has been convicted of bribery of the right to vote. This is a case where a grant of power removes a restriction. The constitution itself determines in the first place who shall vote. Without its express authority the legislature would have no power to deprive a citizen of the right to vote. The constitution recog-

nizes two classes of bribery cases: 1. The bestowing of gifts to influence voters at elections. 2. The bestowing of gifts to influence the official acts of legislative, executive, or judicial officers. In successful bribery there are two offenders, the one who gives and the one who receives the bribe. When a bribe is offered and refused, there is only one criminal. Some of the constitutions require the members of the legislature to bind themselves by oath or affirmation not to accept bribes. In Tennessee, any person convicted of giving or offering a bribe, to influence a voter to elect him to an office, is for six years thereafter disqualified from holding the office. In New York and a few other states, the legislature is empowered to deprive a voter of the right to vote at an election on whose issues he has offered a bet, or wager.

Slavery and the State Constitutions. — Slavery existed in every state of the original thirteen when the first constitutions were framed. The early constitutions are generally without definite provisions on the subject of slavery. The Virginia constitution, 1776, accuses King George III. of prompting the negroes to rise in arms. "Those very negroes whom, by an inhuman use of his negative [veto], he had refused us permission to exclude by law." In the same year the South Carolina constitution accuses the royal governors of freeing slaves and arming them against their masters. The Vermont constitution, of 1777, says that no male person after the age of twenty-one, or female after the age of eighteen, ought to be held as a slave. The Tennessee constitution, of 1796, provides that a slave shall not be taxed higher than two hundred acres of land. No con-

stitution has ever in express terms provided for the establishment, introduction, or maintenance of slavery. Massachusetts was the first of the thirteen states to abolish slavery; yet in its constitution there is no mention of slavery.

The famous constitution of Missouri, which was submitted to Congress for approval in 1820, the discussion of which led to the Missouri Compromise, had in it: 1. An article forbidding the legislature to emancipate slaves without the consent of the owner, and without full compensation, or to prohibit actual settlers from bringing their slaves into the state. 2. The legislature was empowered to prohibit the bringing in of slaves of criminal character, and slaves who had been imported in violation of laws of the United States. 3. It was made the duty of the legislature to exclude free negroes, and to require the humane treatment of slaves.

After the agitation for the overthrow of slavery began, constitutional provisions for its defence appeared in some of the slave states. The constitution of Virginia, in 1850, required that emancipated slaves should be re-enslaved if they did not leave the state within one year after emancipation. Power was granted to the legislature to forbid the emancipation of slaves by their owners, and to make laws for ridding the state of free negroes.

After the Civil War, clauses were inserted in the constitutions of all the former slave states declaring that slavery should not exist in the state.

Intoxicating Liquors. — The early constitutions say nothing concerning the sale of intoxicating liquors. In the years 1850 and 1851, Michigan and Ohio inserted clauses in their constitutions depriving the legislatures

of the power to license the sale of intoxicating liquors. It was expected that these provisions would be followed by laws prohibiting the traffic. Such laws, however, were not made; and the constitutional restriction upon the legislature made it difficult to limit the traffic in any way. Laws passed to limit the traffic by taxation were declared by the courts to be in conflict with the constitution. Thus the act, which was carried in the interest of restriction, had the opposite effect in practice. Michigan, in 1876, removed the restriction upon the legislature.

Prohibitory Amendments. — Several states have in recent years adopted amendments to their constitutions prohibiting in express terms the manufacture and sale of intoxicating drinks, and making it the duty of their legislatures to pass laws to render the provisions effective. In the state of Rhode Island an amendment was carried; but the legislature and executive failed to give due support to the measure, and after two years the people reversed their action, and the amendment was revoked. The state of Maine, after maintaining prohibition by statute for more than thirty years, inserted a prohibitory amendment in the constitution. The constitution of Texas, in 1876, made it the duty of the legislature to provide for voting by counties, towns, and cities, from time to time, on the question of prohibiting the liquor traffic in the locality. In 1882 a prohibitory amendment was submitted to the voters of Iowa, and had a majority of the votes in its favor. Immediately a case was brought in the courts, to test the validity of the amendment. The Supreme Court ruled that the amendment was void and of no force, because there had been departures from the provisions of the constitution, in the method of its adop-

tion. The legislature, after this decision, passed a stringent prohibitory law. The same court ruled that this law is constitutional, and has given effect to its most stringent features.

Other Statutory Provisions. — The constitutions of Michigan and some other states secure to the wife, as against the debts of her husband, the possession of all the property which she had before marriage, and all she may receive by gift or inheritance after marriage. In other states the rights of the wife to property are regulated by statute. In some of the mining states are found rules for the owning and operating of mines. The constitution of Oregon, of 1857, forbids a Chinaman to own or work a mining claim. The constitution of Colorado contains clauses regulating the appropriation and use of the water of the state.

No single state constitution contains a large body of statutes; yet, by taking all the constitutions, a quantity of minute legislation may be collected, showing that the line between fundamental law and ordinary law has not been carefully observed.

The statutory clauses do not usually have the full form of statutes, but require an act of the legislature to make them complete. Often, when an act is forbidden, the legislature is directed to pass laws affixing appropriate penalties. The constitution of Maryland, of 1864, contains the following: "Any person who shall, after this constitution shall have gone into effect, detain in slavery any person emancipated by the provisions of this constitution, shall, on conviction, be fined not less than five hundred dollars nor more than five thousand dollars, or be imprisoned not more than five years; and

any of the judges of this state shall discharge on *habeas corpus* any person so detained in slavery." This, it will be observed, is a full and complete statute, and requires no act of the legislature to provide for its enforcement.

Special Legislation. — While Congress can legislate on comparatively few subjects, there are many within the power of a state legislature. Bills have come before the legislatures in such numbers that they have been passed into laws without receiving due attention. Many abuses have been removed, and the work of legislation has been much simplified, by forbidding the legislature to pass special laws on certain subjects. The constitution of Illinois, of 1870, forbids special laws on twenty-three subjects, among which are: the granting of divorces, the changing of the names of persons or places, the incorporation of towns and cities, and changing the charters of cities. The legislature cannot change the name of a man by special bill, but may pass a law in accordance with which names may be changed.

CHAPTER XXXVIII.

EXPLANATION OF SPECIAL PASSAGES.

THE greater part of the Constitution of the United States may be read and understood without note or comment. Many parts have been explained in describing the institutions for which it gives directions. A few of the clauses not explained in former chapters will here be noticed.

The double negative appears a good many times, giving obscurity to the sentence, especially if it be long and complex. Art. I., Sec. II., clause 1, means that no person shall represent a state in which he does not live.

Slavery. — The Constitution did not contain the word "slave" or "slavery" till the adoption of the thirteenth amendment, but there are three passages in which slaves are meant. The "Three-fifths of all other persons," Art. I., Sec. II., clause 3, means three-fifths of the slaves. In determining the basis for representation, all free persons of all colors were counted except Indians who were not taxed. Prisoners were counted as freemen. "All other persons" were the slaves, from whose number two-fifths were deducted, and the remainder was added to the number of freemen. In Sec. IX. of the same article, Congress is forbidden to prohibit the importation of slaves before 1808, but is permitted to collect a tax of ten dollars upon each slave imported. Instead of saying "slaves," the words are, "such persons as any of the states now existing shall think proper to admit." The third reference to slaves is the clause which requires the surrender of the fugitive slaves escaping from one state into another. The words by which slaves are here alluded to are, "No person held to service or labor in one state, under the laws thereof." John Quincy Adams called these passages the "fig-leaves of the Constitution." Its makers felt a measure of shame for the existence of slavery, and disguised as far as possible the references to it.

Three Classes of Senators. — The first Senate was composed of twenty members. As directed in Sec. III., these senators divided themselves into three classes:

seven of them served two years, seven served four years, and six of them served six years. The senatorial terms for the first class run from 1789, 1791, 1797, 1803, 1809, and so on, by periods of six years perpetually. The terms of the second class run from 1789 to 1793, 1799, 1805, etc. The third class goes by six-year periods from 1789. When two senators were admitted from New York, one was put in the first class and one in the third. When two senators appeared from North Carolina the first class already contained eight members, and the other two seven each. The Constitution therefore required that one of these should be placed in the second class, that is, the class whose full six-year terms date from 1793; and the other in the third class whose six-year terms date from 1789. The three classes then contained eight members each. When the two senators from Rhode Island entered the Senate, two of the classes were increased to nine each. In this way the three classes have been kept as nearly equal as possible. The first senators from a new state are always put into different classes, so that one or both will have for the first time a term of less than six years. By this arrangement one-third of the senators is chosen every two years.

Electors. — One meaning of the word *elector* is now more commonly expressed by the word voter. It has this sense in Art. I., Sec, II. The clause means that all who have a right to vote for members of the most numerous branch of the state legislature shall have a right to vote for representatives to Congress. When the Constitution was framed, several of the states required a voter to own property, and a few of them

required more property to entitle one to vote for a state senator than for a member of the more numerous branch of the legislature. In Art. II., and in the twelfth amendment, the word elector has a special meaning. It is applied to those who are chosen to cast the vote of the state for President and Vice-President.

Yeas and Nays. — The method of voting usually followed in Congress is by voice, and the presiding officer decides the vote by the sound. In cases of doubt, the members may be requested to stand and be counted. If members are not satisfied, they may call for the *yeas and nays.* This method requires a roll-call of all the members. Those voting to sustain the motion answer "yea" or aye; and those voting against the motion answer "nay" or no. The answers are all entered upon the journal, and the vote of each is thus made a matter of public record. The Constitution, Art. I., Sec. V., makes it possible for one-fifth of the members present to compel the yeas and nays to be taken upon any question. This is a check upon injurious legislation. A member might secretly vote for a bad bill, who would be deterred if his vote is to be a matter of record. Some of the state constitutions guard still farther against bad legislation, by authorizing each member to protest against a measure and have his objections entered upon the journal. This precludes other members from pleading ignorance in supporting a corrupt measure.

Vacancies. — A vacancy in the Senate is filled by the legislature of the state electing a new senator for the unexpired term. If the legislature is not in session, the governor of the state appoints a senator to fill the office till the legislature convenes. A vacancy in the

House is filled by an election in the district which is left without a member. The governor of the state issues writs for an election to fill the vacancy, often appointing it on the day of some other election in the district.

Compensation of Officers. — The members of Congress fix their own salaries by law.[1] Senators and representatives have received the same compensation except during one year, 1795, when the senators received a dollar a day more. The salary was fixed in 1789 at $6 a day while in session, in 1815 at $1,500 a year, in 1817 at $8 a day, in 1855 at $3,000 a year. In 1865 it was changed to $5,000, and has remained at that rate ever since except from 1871 to 1874, when it was $7,500. The law changing the salary from $5,000 to $7,500 was passed March 3, 1873, and was made to apply from March 4, 1871, thus giving the members two years of back pay. This caused a great outcry against the law, and led to its repeal by the next Congress. In every case where the pay of members has been increased it has been made to apply at a date earlier than the passage of the bill. The Constitution in express terms makes it impossible to either increase or diminish the compensation of the President during his term of office.[2] President Grant during his first term received a salary of $25,000 a year, and during the second term it was $50,000. The increase was at the beginning of the second term. Congress is permitted by the Constitution to increase the salary of a judge in the federal courts during his term of office, but not to decrease it.[3]

Privileges of Congressmen. — The Constitution exempts Congressmen from liability to arrest except for

[1] Art. I. sec. 6, cl. 1 [2] Art. II. sec. 1, cl. 7. [3] Art. III. sec. 1.

treason, felony, and breach of the peace, during their attendance at the sessions, or while going to and returning from the same.[1] The object of this provision is to prevent attempts to control legislative action by keeping members away. Members are also privileged from being punished out of the houses of Congress for anything said in the house. This is to secure to them entire freedom of discussion. Each house may punish its own members for misconduct in speech or act.

Civil Officers of the United States. — The phrase *civil officers* in one clause of the Constitution has given rise to the question whether Congressmen are civil officers. Sec. VI., Art. I., says, "No senator or representative shall, during the term for which he was elected, be appointed to any civil office under the United States, which shall have been created, or the emoluments whereof shall have been increased, during such term." Here "civil office" seems to mean an office not military which Congress has the power to create. If Congress attaches an increased salary to a civil office, no member of that Congress can be appointed to it before his term of office has expired. He can take a military office which has been thus created, but only on condition of ceasing to be a member of Congress; for the same clause forbids a member of Congress to hold any office under the United States. Sec. III., Art. II. says the President "shall commission all the officers of the United States." The President does not commission Congressmen; hence some have concluded that a Congressman is not an officer of the United States in the meaning of the Constitution.

[1] Art. I. sec. 6, cl. 1.

Are Congressmen Liable to Impeachment? — Sec. VI., Art. II., says, "The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crime or misdemeanor." If, therefore, Congressmen are civil officers, they are liable to impeachment. As stated in a former chapter, when a senator was impeached by the house, some of the senators took the view that a member of Congress was not subject to impeachment. The power of each house to discipline its own members extends to their expulsion. The only additional punishment possible in case of impeachment is to disqualify for holding any federal office.

Letters of Marque and Reprisal. — *A letter of marque and reprisal* is a document authorizing a private individual to go beyond the marque, or boundary, of his country, and make reprisals, that is, seize and bring away the ships or other goods belonging to subjects of another nation. A private ship sailing with such authority is called a privateer. While Andrew Jackson was President, France agreed by treaty to pay about $5,000,000 for the settlement of dues to citizens of the United States. The French government neglected to fulfil the contract, and President Jackson proposed to Congress to authorize letters of marque and reprisal, to compel its settlement. If reprisals had been attempted, war would naturally have ensued. The authority was not granted and the money was soon after paid. Congress authorized letters of marque during the Civil War but none were issued. The *Alabama* was a privateer authorized by the Confederate government.

Bills of Attainder and Ex post facto Laws. — Two phrases are found together in the Federal Constitution, and they are repeated in many of the state constitutions. An *ex post facto* law is one which works to the disadvantage of a subject on account of some act committed before the law was passed. If the legislature increases the penalty of a crime, the increase cannot be applied to a crime already committed. If the penalty is diminished, the benefit may be applied to previous cases. *Ex post facto* legislation, as the courts interpret the phrase, is limited to laws affecting the citizen to his disadvantage. The prohibition of this sort of legislation has had important results over the action of legislatures and courts.

No evidence is given that the prohibition of bills of attainder has ever influenced the act of any officer. This expression was put into our constitutions because the English Parliament had passed bills of attainder. Such a bill was an act of Parliament, voted upon like any other law. It named a person, and declared him guilty of treason or some other crime. If it were passed by a majority of the houses, the person attainted was usually executed, his property was confiscated, and his family was degraded and deprived of civil rights. In some instances such bills were carried through Parliament without permitting any defence of the accused, or any evidence in his favor. In such a proceeding Parliament combined legislative, judicial, and executive functions. The separation of the other departments of government from the legislature naturally takes out of its hands such unlimited power. In the English constitution the bill of attainder has fallen out of use. Attainder in Art. III., Sec. III., means simply conviction.

Corruption of Blood. — According to the common law of England, conviction for treason caused the degradation of the family of the convict, and the forfeiture of all property, and of the right to own and inherit property. This is called *corruption of blood*, and is forbidden in our Constitution.[1]

The United States a Nation. — The few passages in the Constitution which show whether the term United States was a singular or a plural noun, as viewed by the makers of the Constitution, all mark it as plural. "Treason against the United States shall consist in levying war against *them*, or in adhering to *their* enemies."[2] "The judicial power shall extend to all cases arising under this Constitution, the laws of the United States, and treaties made under *their* authority."[3] Modern usage would substitute the singular for the plural pronouns. We are accustomed to assert that the United States is a nation. In form the term remains plural; in grammatical use it is now treated as singular. The prevalence of the new usage is vastly more than a mere change of grammar. From the beginning there were two radically different views of the nature of the Union. One class of statesmen gave chief emphasis to *states*. According to their view, the Union was composed of sovereign states. The federal government was a mere agency of the states. The continuance of the Union depended upon the will of the several states. The plural expression meant, to these statesmen, plural sovereignties. The statesmen of the opposite school emphasized the idea of *Union*. According to their view, the Union rested not upon states, as such, but upon the people of all the states. The federal

[1] Art. III. sec. 3, cl. 2. [2] Art. III. sec. 3, cl. 1. [3] Art. III. sec. 2, cl. 1.

government was not an agency of states, but was a government of supreme authority over all matters committed to it. All the people and all the states alike were subject to the perpetual authority of the federal government. Federal officers alone had a right to determine what were the limits of federal authority. To these statesmen the plural term meant a single thing, namely, the Union, or the federal government.

CHAPTER XXXIX.

THE SILENCES OF THE FEDERAL CONSTITUTION.

It is important that the text of the Constitution should be well understood. A knowledge of the text is vastly more important than a knowledge of what has been said about it. The court of final appeal bases its decisions upon what the Constitution says, rather than upon the opinions of those who have explained the Constitution. The only form of commentary which approaches in importance the text of the Constitution, is found in a statement of the things which have been done in its name and under its authority.

Yet one may have a thorough knowledge of the text of the Constitution, and may understand perfectly every word, phrase, and sentence, and the historical incidents which led to their use, and still have little knowledge of the government. The wisdom of those who framed the Constitution is seen as much in the things which they left out as in what they put in. The relation of states to the federal government is the point which has been

the source of a large proportion of our difficulties. This relation was made very clear in a few essential features, and left remarkably indefinite in a multitude of details. The Articles of Confederation said that every power not expressly delegated to the United States was retained by the states. In the Constitution, as first framed, nothing is said on the subject of retaining power by states. In the tenth amendment, where a similar idea is stated, the word *expressly* is omitted. No words in the document indicate in express terms whether the grant of powers is to be interpreted strictly or liberally. Problems, the clear solution of which is beyond the wit of man to determine in advance, are left to be settled by experience, as the occasions arise.

The Articles of Confederation required ratification by all the states before they should go into effect. The Constitution was to go into effect when nine states should ratify. Nothing is said as to what would be done with the four states which might not ratify. Happily this question can never be answered. The believer in high national power may think, if he choose, that had four of the most powerful states refused to enter the Union, the Union would have made war upon them and compelled them to enter it. On the other hand, the believer in the sovereignty of the states may think that if the feeblest of the thirteen states had refused to ratify, the Union would forever have respected its sovereign rights. Between these extreme views there is room for many grades of opinion. Those who appreciate the difficulty to be overcome will approve of the silence of the Constitution on this point.

After a state has entered the Union, there is nothing

in the Constitution which expressly states whether it has a right to withdraw. And even now, after a civil war in which that question was involved, the Constitution is still silent. The eleven seceding states were required, as a condition of being readmitted, to put into their constitutions an explicit denial of the right of secession, but nothing of the sort has been placed in the Federal Constitution. The Union will not be divided simply because men differ about the constitutional right of a state to secede. If other causes should threaten the integrity of the Union, it may well be doubted whether a clause denying the right of division would give it strength.

CHAPTER XL.

FEDERAL AND STATE POWERS.

THE parts of the Constitution which require special attention are those which have been used to determine the relation of the states to the federal government, and the relation of the states to each other. These are the clauses conferring powers upon Congress, denying powers to Congress, denying powers to states, and a few clauses in the fourth and sixth articles, which relate to states and to the supremacy of the federal government.

Powers Expressly Conferred. — Art. I., Sec. VIII., enumerates the powers of Congress. The conferring of a power upon Congress does not necessarily take it from the state. General power of taxation is conferred by the first clause. The states likewise have the powers of taxation, except as limited by a prohibition in Sec. X.

In clause 2, Congress is granted power to borrow money; the states, so far as the Federal Constitution is concerned, have also full power to borrow money.

To Regulate Commerce. — Clause 3, conferring power upon Congress to regulate commerce with foreign nations, and among the states, and with the Indian tribes, has been held to designate powers exclusively federal. The state regulates trade within its own borders. It may do nothing to limit, restrict, or regulate trade with a foreign nation. The federal government may regulate foreign commerce by acts of Congress, and also by treaties which are made by the President and the Senate. A large part of federal legislation has reference to foreign commerce and the agencies of commerce. Extreme use of this power was made in Jefferson's administration, when Congress for several months maintained an Embargo Act, which cut off all trade with foreign nations through the agency of American ships, and then for a time a Non-Intercourse Act, which cut off all trade with France and England. The citizens whose business was thus injured claimed that these acts were unconstitutional, on the ground that the power to regulate did not extend to the power to destroy.

The Constitution itself secures freedom of commerce between the states. Congress is denied the power to collect a tax on goods exported from a state. Congress is also forbidden to charge greater duties in one state than in another, and vessels are allowed to sail directly to and from all the ports of the Union. The states are likewise forbidden to collect duties on imports or exports, "except what may be absolutely necessary for executing inspection laws." These passages show the

intention to secure freedom of commerce between the states. Yet many difficult constitutional questions have arisen in the application of these provisions.

The states have a right to inspect goods brought within their limits, in order to protect their citizens from fraud or injury. Some of the states maintain a commission to inspect illuminating oils. Oils of a specially dangerous character are prohibited from the market. The expense of such a commission may be met by collecting a fee from the importers of the oil. The states have laws punishing those who bring in diseased animals. Instances have occurred where a state has forbidden the introduction of all cattle from the locality of a contagious disease, or certain breeds specially liable to spread disease. These provisions interfere with commerce between the states; but they are sustained by the courts, if the manifest intention is to protect the citizens from injury. It is an exercise of police power belonging to the state.

The state of Minnesota passed a law requiring all fresh meat offered in the market to be inspected on foot, within the state, within twenty-four hours of the time of slaughter. The courts ruled this law unconstitutional, because it was believed to be intended not to protect the citizens from diseased meat, but to favor a local industry. States are accustomed to collect license fees and taxes on trades and occupations. The courts sustain these acts unless a discrimination is made against citizens of other states. A law of Missouri, requiring dealers in wool not produced in the state to pay a license fee, was ruled unconstitutional, because it was virtually a duty upon imported wool. Had the law applied to

all who sold wool, it would have been sustained. For similar reasons, a law of Michigan was held to be void which required travelling agents of such breweries only as were outside of the state to pay a license fee. The state of Maryland passed a law, imposing license fees on all importers of foreign goods, and all who sold such goods in original packages. The courts held the law to be void, because it had the effect of a duty on imports.

The Liquor Traffic. — Many difficult questions have arisen in states prohibiting the liquor traffic. The courts sustain the states in the exercise of the right to prohibit the manufacture and sale of intoxicating beverages; but in all cases the sale of liquors is permitted for other purposes. Questions then arise as to the liability of express companies, railroad companies, and dealers in original packages. 1. A state law forbidding railways and other common carriers to carry in liquors is held to be unconstitutional. These are permitted, or even required to convey the goods to the importer, although the state law may forbid it. 2. According to a recent decision of the Supreme Court of the United States, an importer of liquors from another state is permitted to sell them in the original packages in which they are imported, even though the state law may forbid such sale. This decision seemed to have the effect to destroy, in large part, the power of the state to control the liquor traffic. Congress then passed a law whose object was to secure to the states full control over the sale of imported liquors.

Indian Trade. — When Indians break up their tribal relation, they cease to be under special federal control, and become subject to the local state or territorial gov-

ernment. The federal government has exercised peculiar control over Indians living in tribes, and during their transition to ordinary citizenship. The power to regulate commerce with Indian tribes is given to Congress. Yet states in which tribes have been located have passed laws forbidding the sale of intoxicating liquors to Indians. Probably any state law on Indian trade not in conflict with federal regulations would be sustained by the courts.

Naturalization of Aliens. — The fourth clause of Sec. VIII. gives to Congress power to make uniform laws on the subjects of naturalization and bankruptcies. An alien is a subject of a foreign country. In some states aliens are not permitted to own real estate without an act of the legislature; but in a majority of the states they enjoy all the rights of property which belong to the citizen. A few of the states permit the alien to vote before he has been naturalized. In no state can he hold office. A state has no right to naturalize a foreigner, yet it can confer upon him nearly all the rights which naturalization would give. A naturalized foreigner enjoys all the rights of a native-born citizen, except the right to be President of the United States.

A term of residence is required before naturalization, being fixed at two years by the first law, passed in 1790, at five years in 1795, and at fourteen years in 1798. In 1802 the period of five years was restored, and has remained to the present day. A notice of intention to become a citizen must be filed in a court of record two years previous to naturalization. Children who are minors at the time their parents are naturalized are declared citizens by the law.

The early laws of Congress restricted naturalization to white persons. In 1870 the privilege was extended to those of African descent. Some of the courts at first granted naturalization papers to Chinese, on the ground that they were white; others took a different view. In 1882 Congress expressly denied to the Chinese the privilege of citizenship.

Bankrupt Laws. — One of the chief objects of a bankrupt law is to secure a just distribution, among the creditors, of the property of those who fail in business, and are unable to pay their debts. National bankrupt laws have been in operation during only about sixteen years. The states have regulated bankruptcies at other times. Even while a law of Congress was in force, some state laws on the subject which were not in conflict with the federal law were held to be valid.

Weights and Measures. — The fifth clause of Sec. VIII. gives to Congress power to coin money and to fix the standard of weights and measures. President Washington urged Congress to pass a law on the latter subject, and John Quincy Adams, while Secretary of the Treasury, in 1821, made an elaborate report on its necessity. Congress has never acted in accordance with these recommendations. The power which the Constitution confers upon Congress has been exercised by the various states. In 1836 the Secretary of the Treasury was directed to present to each state a full set of British weights and measures, that they might be adopted, and that uniformity might thus be secured. The states are not required to adopt these as standards. Since 1866 statutes have been passed by Congress to encourage the use of the metric system. Standard metric weights

and measures have been distributed to the states, and a law of Congress makes it possible to enforce in the courts contracts in which the metric system is used. But no law requires its use. This is one of the best illustrations in the Constitution of a power conferred upon the federal government, which has in practice been left in the hands of the states.

Counterfeiting. — As stated in a former chapter, the conferring upon Congress of the power to make laws for the punishment of counterfeiting has not been construed by the courts as depriving the states of the power to punish the same offence. The counterfeiter is therefore liable to punishment by either of the two governments.

Post-Offices and Post-Roads. — The seventh clause of Sec. VIII. gives to Congress the power to establish post-offices and post-roads. One of these powers has from the beginning been exclusively exercised by Congress; the supervision of roads has been almost exclusively in the hands of the states. The states have no control over the postal service. There is no clause in the Constitution expressly denying it to the states, yet interference on their part would be viewed as an encroachment upon a power exclusively federal. The mail service will not admit of a divided control. With post-roads the case is different. Congress can leave to the states, and to individual and corporate enterprise, the work of establishing and maintaining highways and railroads, and simply provide for the using of them as post-roads.

Patents and Copyrights. — The power of securing to inventors and authors the exclusive right to their

writings and discoveries for a limited period is conferred upon Congress by the eighth clause. This power is held to be exclusively federal. States may not grant either copyrights or patent-rights, and all suits growing out of a defence of these rights are tried in federal courts.

An author has the exclusive right to publish and sell his writings for the period of twenty-eight years. On application of the author, or his widow, or children, six months before the expiration of the term, the right may be extended fourteen years longer. A patent-right secures to the inventor the control of his invention for seventeen years. Congress may extend the time.

Police Power. — Congress has no general police power, as each state has police power within its borders. The tenth clause of Sec. VIII. gives Congress power to punish felonies committed on the high seas, and offences against the law of nations. This means that Congress shall exercise police power on board of American vessels at sea. One offence against the law of nations is piracy. The crew of a pirate vessel may be punished by any government which captures them, without regard to nationality. Another offence against the law of nations is the offering of violence to a minister representing a foreign nation. Congress has provided by law for its punishment. Over such offences Congress has full power, in whatever part of the country they are committed. The seventeenth clause gives to Congress all governmental power over the District of Columbia, and over lands purchased for forts, and dockyards, and other purposes. The third section of Art. IV. gives similar power over all territories of the United States.

Military Powers. — The clauses of Sec. VIII. relating to military matters, and others in Sec. X., give to the federal government full power to maintain an army and navy. The states are forbidden to keep troops or ships of war. To the states are reserved certain rights and powers over the militia. Each state has a right to appoint the officers of its own militia, and the militia may be trained under the authority of the state; yet the Constitution implies that the state shall follow rules of discipline prescribed by Congress. The second amendment prohibits the federal government from infringing the right of the people to keep and bear arms. A state government may deprive its people of the right to bear arms to any extent not in conflict with federal laws. Many of the states forbid the bearing of concealed weapons.

Other Grants of Powers. — Besides Sec. VIII. of Art. I. there are a few other passages in the Constitution which expressly confer powers upon Congress. It may provide by law for the election of its own members, Art. I., Sec. IV.; for the appointment to office in the civil service, Art. II., Sec. II., clause 2; may provide for the punishment of treason, Art. III., Sec. III.; and may propose amendments to the Constitution, Art. V. Sec. VIII. closes with a sweeping clause which confers upon Congress power "to make all laws necessary and proper" to carry into effect all powers which the Constitution vests in any department or office of the federal government. It is the duty of Congress to provide the ways and means of government.

Implied Powers. — It will be observed that the states still possess many of the powers which in the Constitu-

tion are expressly conferred upon Congress. It depends upon the action of the federal government and the interpretation of the courts whether the conferring of a power deprives a state of its exercise. While Congress has not chosen to exercise all the powers expressly conferred, it has from the beginning exercised many others. These are held to be conferred indirectly, being implied in some grant of power.

Assumption of State Debts. — The Constitution makes no mention of any power of the federal government to assume and pay the debts of the states. But one of the early acts of the government was to provide for the payment of the debts which the states had incurred in the Revolutionary War. This was done under the plea that these debts were incurred in the common defence, and Congress has power to provide for the common defence.

Banks. — The word *bank* is not in the Constitution. Yet a United States bank was chartered by Congress in 1791, another in 1816, and in 1863 there was established a system of national banks. The power to do this is held by the courts to be implied in the power to collect taxes, to borrow money, and to regulate commerce. The first banks were made agents for collecting and keeping the revenues of the government. In 1863, national banks were made a means of borrowing money to carry on the war. The powers of taxing and borrowing carry with them the power to maintain banks as an aid to their exercise. A large proportion of the acts of Congress belong to implied powers, rather than to powers expressly conferred. Such is the power to acquire territory, to maintain a tariff for the encour-

agement of domestic industries, to promote internal improvements, to control railways, to maintain hospitals and educational institutions, the signal service, light-house and life-saving service, the bureau of education, the bureau of labor statistics, and a department for the encouragement of agriculture.

Assumed Powers. — Some of the powers named have been decided by the courts to be implied in one or another of the powers expressly granted. Of some which have never been contested it is not easy to say in what clause of the Constitution they are implied. Such is the authority to collect seeds and distribute them among farmers, and in various ways to aid improvements in agriculture, as has been done from the beginning. A federal power is not likely to be contested unless it interferes with some cherished right or tends to limit the power of the states. By avoiding these occasions of jealousy, the federal government may exercise a number of powers which are simply *assumed*.

Elastic Clauses. — The clauses which have been most relied upon as the source of implied powers are those granting the power to tax, to borrow, to regulate commerce, and to establish post-offices and post-roads. Out of the power to regulate commerce, as is now held, may be derived unlimited authority over railways as agents of interstate commerce. Out of the power to establish post-offices is derived the power to take full control of the telegraphic business. Some writers on the Constitution have held that the Preamble is a part of the fundamental law, and that from it Congress has power to make laws to promote the general welfare. According to this theory, any power now exercised by the

states may be assumed by Congress, so soon as a majority of the members believe that the general welfare would be thus promoted. But the courts have uniformly ruled that the states have powers not by the favor of Congress, but by the terms of the Constitution.

CHAPTER XLI.

CENTRALIZATION AND DECENTRALIZATION.

The Federal Principle. — Perfection in our form of government will have been reached, when Congress shall have discovered and wisely exercised all the powers which the interests of good government require shall be in the hands of the general government, and when the states shall have become conscious of the limits of their powers, and shall have wisely met the responsibilities placed upon them. The Constitution readily yields itself to the search for the best distribution of powers. If it is found best not to exercise a power expressly conferred, our courts hold that such an unused power is still as fully in the hands of the states as if not conferred. If it is found best to exercise a power not expressly granted, the terms of the grant admit an interpretation including the needed powers.

The plan of giving to the general government control of matters of general interest and making the states responsible for local concerns is known as the federal system of government. The federal principle does not end with the states. The counties, besides serving as agencies of the central power of the state, may have a

measure of governmental responsibility. Cities and incorporated towns exercise much authority, while many important powers may be intrusted to townships and school districts. Just what powers would better be intrusted to each governmental area, can be determined only by experience. A state government may itself vote and collect a school tax; it may appoint a committee and maintain a school in every school district of the state. Yet a state which accomplishes the same ends by giving to the district power to do these things, is much more secure in its possession of public schools. A temporary change of sentiment might change the policy of the state government, and the schools might be stopped, and the entire system be threatened. But if the system is fixed in the habits of the districts, it would be in less danger of serious injury from temporary change of sentiment. Many things which may for a limited time be more effectively done by the central government, will yet, if committed to the local governments, in the end be better done. By giving to the small local areas a large measure of powers, better government may in the end be secured, and, in addition, the people be educated in political wisdom. If destruction or anarchy come to the central governments, the self-governing parts will prevent universal anarchy. Or, if the destructive force originates in one of the parts, the conservative strength of the others will aid the central government in its high function of securing general order.

An English paper misapprehended the situation when it remarked, in view of the admission at one time of four new states, that it remained to be seen whether

the federal government would bear such a strain. The federal government had for years borne the strain of immediate responsibility for their government as territories. When they became states, federal responsibility for local affairs ceased. The federal government bears the strain of the direct government of Utah. Special laws are passed for its government, and administered by federal officers. When the people of Utah become capable of ruling their territory in such a manner as not to endanger good government in other places, a state will be formed, and the strain upon the federal government will be removed. In a strongly centralized government every increase in population or territory tends to make government more difficult. But under the federal system there may be indefinite extension without increasing the difficulties.

CHAPTER XLII.

POLITICAL PARTIES.

Parties in a Monarchy. — A monarchy is the simplest form of government. Where one man is the source of law, authority, and order, there is no necessity for political parties. The monarch and those selected by him decide all questions, and the people have no pains or trouble in the case. People who take an interest in the government may organize and maintain a half-dozen political parties or societies for the purpose of influencing action. If they are not to decide what shall be done, there is no necessity for majorities. But if the

people are required to decide questions, there is need of majorities.

Parties in Local Government. — If the voters of a school district have to locate a schoolhouse, there may be a real difficulty to overcome. There may be twenty-five voters, divided into groups of five each; and each group may prefer to have the house in a different place. If every voter should hold to his own view, and refuse to give up his preference, popular selection would be impossible. The friends of each location form a party, and try to induce at least eight other voters to unite with them. The need is felt of coming to an agreement. Some must give up their preferences that a majority may be obtained, and the house located by popular vote. In almost any county there are three or four places where groups of voters would prefer to locate the county seat. Popular government is not possible unless multitudes sacrifice their first choices and unite with one or another of the groups which are competing for a majority.

Parties in the State and the Nation. — In these local governments it is possible for the voters to divide upon questions as they arise, and to decide them by vote. Here parties can form and disband with little trouble. But it is not easy to form parties for the purpose of deciding questions in a great state or a great nation. It is not ordinarily possible to call into existence national parties upon a single issue; and when national parties are organized, it is not easy to disband them. Our Constitution furnishes no method for deciding ordinary national questions by a direct vote of the people. As a matter of fact, voters simply exercise a choice between two

groups of men or parties who promise to do certain things.

If there are two political parties almost equal in numerical strength, and actual political issues are under discussion, and one party represents one view and the other party the opposite view, then it becomes possible for the voters to exert an influence in deciding the questions at issue. They put into office the party which promises to do the things desired. If the party fails to do the things promised, the utmost that can be done is to wait till the next election, and put the offices into the possession of the opposite political party. The people are reduced by the necessities of their position to a choice between two political parties.

CHAPTER XLIII.

ORIGIN OF PARTY ORGANIZATION.

Party Organization. — It has been shown in former chapters that our federal system came into existence by successive general governments being organized over a group of older local governments, towns uniting into a state, states into a nation. Political parties, or the organized agencies by means of which the people are brought into contact with the government, came into being in reverse order. First, there was the national party organization, then that of the state, and finally party organization was extended to the county, city, ward, and township.

The Congressional Caucus.—Washington was chosen President each time by common consent, without nomination. In 1796 there was an informal agreement among the members of the Federal party in Congress, that John Adams should be their candidate for the Presidency, and among the Republicans that their candidate should be Jefferson. In 1800 a caucus of Federalist Congressmen nominated Adams and Pinkney for the two offices of President and Vice-President, and a caucus of Republicans nominated Jefferson and Burr. There were regular caucus nominations made by each party in 1804. In 1808 a Republican nominating caucus was called by the senator who had been chairman of the caucus in 1804. This is the first suggestion of permanence in the organization of the caucus. Four years later, the caucus appointed a "committee of correspondence," composed of one member from each state. This is the first appearance of one of the most important features of modern party organization.

The Decline of the Nominating Caucus. — From the beginning there was opposition to the congressional caucus. The Federalists made no caucus nomination after 1808. In 1812 seventy delegates from eleven states met in New York, and nominated De Witt Clinton as the Federal candidate. This was the forerunner of the national convention, which finally displaced the congressional caucus. The caucuses by which Monroe was twice put in nomination were attended by only a part of the Republican members of Congress. Crawford, the last congressional nominee, was defeated in 1824. State caucuses and state committees of correspondence continued to have a share in the business of nominating

until 1840, when the candidates for each party were nominated by national conventions.

State Nominating Caucuses. — As congressional caucuses nominated candidates for the Presidency, so the members of the state legislatures nominated state officers. There were nominations by caucus in the New York legislature earlier than the first congressional caucus nomination. The caucuses in New York and Virginia exerted a great influence over other states.

Conventions. — Nominations by legislative caucus were early condemned, as throwing political power into the hands of a few men. The extension of the franchise, and the growing democratic spirit, led people who were not in the legislature to demand a share in the business of choosing candidates. As early as 1817, the Republican caucus in New York admitted to its membership delegates from counties which had no Republican representatives in the legislature. In a short time, delegates were sent from all the counties in New York. The example was followed in other states, and in this way the party convention took the place of the nominating caucus.

National Conventions. — It required many years to perfect the system of convention nominations. The Democratic party, which had now displaced the Republican party, held an irregular national convention as early as 1832. A more perfect convention nominated Van Buren in 1835. The Whigs held their first national convention in 1839, and nominated Harrison and Tyler. It was many years before all the states were represented in these conventions. As now organized, each of the two national conventions is composed of delegates from

state conventions, twice as many from each state as it has members of Congress. The Republican convention admits to full membership two delegates from each territory and one from the District of Columbia. The Democratic convention, since the first meeting, held in 1832, has followed the rule of voting by states in the selection of candidates. That is, the entire vote of the state is cast as the majority of the delegation from the state prefers. The majority may cast the entire vote of the State for one candidate, or divide it among several without reference to the choice of individual delegates. The Democratic convention has also from the first required a vote of two-thirds of the delegates to make a nomination. In the Republican convention, a majority of the delegates makes a nomination, and each member may vote regardless of the wishes of the majority from his state.

Platform and Committee. — Besides nominating the candidates, the national convention adopts a series of resolutions, called the party platform, setting forth the doctrines and principles of the party. It also appoints a national committee consisting of one member from each state, whose business it is to give direction to the approaching campaign, to collect and expend money for election expenses, to look after the interests of the party during the four years' vacation of the convention, and to call the next national convention. The committee is not chosen till the nominations are made, and the personal wishes of the candidates are consulted in selecting its members.

Congressional Committee. — Besides the national committee appointed by the convention, there is a

campaign committee appointed every two years by a congressional caucus, to look after the election of congressmen. This is a survival of the old caucus committee, first appointed in 1812.

Local Party Organization. — Among the various states there is a great diversity in the forms of party organization. In general, the states having a highly developed system of local government have also a highly developed party system. In each state a state convention is held annually, or as often as there are state officers to elect. Once in four years the state conventions select delegates to the national convention. In the national convention the number of delegates from each state is fixed without reference to its party strength. In a state convention delegates are allowed to the counties or districts in proportion to the party vote at a recent election. In other respects the state convention resembles the national convention. It adopts a party platform; it nominates candidates for state offices; it appoints a committee to look after the interests of the party until the next convention. In many states a convention is held in each county, to nominate county officers, select delegates to the state convention, and appoint a county committee. The county convention also sends delegates to conventions in congressional districts, to nominate candidates for Congress, and in judicial districts to nominate judges and other district officers. These last are usually purely nominating conventions, in which no committees are chosen and no delegates are selected to a convention of higher grade.

The Primary. — The object of all this elaborate party machinery is to enable the people to choose their rulers.

If an ordinary voter should attempt to take part in any one of the conventions described in the previous paragraphs, he would be ruled out of order. No one can act except delegates. But there is a place where this party machinery touches the ordinary voter. The party meeting in which he is permitted to act is called a *primary*. In some places the county is made the area for the primary meeting, but in most states it is the town, the township, or the ward.

The Machine in Action. — We will now suppose that a candidate for the Presidency is to be chosen and a national platform is to be adopted. The chairman of the township committee will publish a notice for a meeting of the township primary. At the appointed time the voters of the party assemble. They discuss the merits of candidates, and adopt statements of their views on political questions and party issues. They select delegates to the approaching county convention. The date of the county convention is fixed by the chairman of the county committee. The meeting is composed of delegates from all the primaries of the county. These compare their views as to candidates and party issues, and select delegates to the state convention. The state convention is supposed to embody the sentiment of all the primaries in the state. Delegates are chosen to express these sentiments in the national convention. The national convention speaks in the name of all the voters of the party in the nation.

CHAPTER XLIV.

PARTY ABUSES.

Some Difficulties. — The above is a sort of ideal description, showing how the party machine might work, rather than how it does work. Even where the primaries are free and uncorrupted, there are serious practical difficulties in the working of the machine. The same primaries and county and state conventions which select delegates to a national convention, are at the same time used to nominate local and state officers. In the free primary, nominations may be made for any number of local offices, each nominee receiving a majority of the votes, while the individuals voting for each may be different. A new majority may be made upon each question to be settled. But the one set of delegates whom they send to the county convention will have power to decide many different questions. If the delegates are chosen with sole reference to their views on the Presidency and on national issues, it would be a mere accident if they expressed the views of the majority of the primary on each of the county offices to be nominated, or on each of the candidates for state offices, and on the various questions in state politics. The conventions, at best, can express the views of the primaries but imperfectly.

Defective Primaries. — In practice, the greatest difficulties have been found in the primaries themselves. More than nine-tenths of the voters perform the last act in the working of the party machine, that is, voting for

the party candidates; yet not one voter in ten has been induced to give attention habitually to the first act, which is tenfold more important in determining the character of the government. The primaries everywhere have suffered from simple neglect. The citizens have submitted to the party machine; they have not accepted it and tried to work it in the interests of good government. If it were left to the best citizens, the few in number, to attend the primaries and give direction to the forces which determine the character of the government, party rule, though not a government by the people, would still be a government by the better sort of people. There are places where activity in local party work is recognized as a mark of good citizenship. There are citizens who do attend the primaries from the most worthy motives. These are the very salt of the earth so far as good government is concerned, and if primaries could be controlled by them, the party machine would yield good government.

Corrupt Primaries. — There are places where the control of the primaries has fallen into unworthy hands. This is especially true in many great cities. The voters in a city primary are strangers to each other. To prevent fraudulent voting, it has seemed desirable that lists of party members should be made, and that the officers of the primary should give much time and attention to party work. Respectable and honorable citizens have neglected or refused to do this work. The business has fallen into the hands of corrupt men. These hold the meetings in places where respectable people dislike to go. They admit to the lists of voters in the primary only those who submit to their leadership. The great

body of the party voters is deprived of the privilege of voting, and their places are filled in the lists by the names of unnaturalized foreigners, or by fictitious names. It has thus come to pass that at the primary election, which virtually determines who shall be city officers, who shall make laws in the state legislature and in Congress, and which indirectly decides who shall be judges, governor of the state, and President of the United States, the great body of the citizens are disfranchised, and the voting power is wielded by a few corrupt men.

Sources of Corruption.—The few who manage the primaries in the large cities obtain money in the following ways: 1. They collect contributions from candidates as a condition of nomination. 2. They are appointed to offices on large salaries, nominally for honorable public service, while they are really occupied in corrupt party service. 3. They levy contributions, or assessments, upon the many employees and officers of the government whom they have influence to remove from office. 4. They rob the treasury by fraudulent contracts with their tools in office for furnishing material or service to the government. 5. They exact contributions from men in business, under a threat of using the power of the government in such a manner as to injure their business. There are no forms of financial dishonor practised by the worst of despots, which have not been employed by the managers of the corrupted primaries, to support the men who monopolize political power.

The question has often been asked, Why do the good citizens who live in places ruled by these corrupted

primaries submit to disfranchisement at the hands of plunderers of the public treasury? No satisfactory answer will probably ever be given to this question. The most frequent answer is that the people are too busy to give attention to politics. If the corrupted primaries, which are at present only a few plague spots on the body politic, should spread to every part, and government by the people should thus perish from this land, it would no more prove that free government is a failure, than the early death of an inebriate proves the existence of a bad climate. Such a catastrophe would only indicate that the sort of people who chanced to live here did not think it worth their while to strive habitually to maintain a government of the people.

Reforms. — The corrupted primaries in large cities are closely connected with the spoils system in politics. In the city there are many public offices, both city and federal, filled by appointment, which have been largely used as means of corruption. To diminish these evils, laws have been passed by the federal government and by some of the states, making entrance to the public service depend upon a competitive examination, instead of upon party service as formerly. There are also laws punishing persons in the public service for collecting money from one another for party purposes. Some of the states have passed laws for the punishment of frauds committed at the primary elections. The introduction of the Australian system of voting will, it is hoped, diminish the evil effects of corrupt primaries. In some places the primary election is separate from any party meeting, and has the form of an ordinary election, at which all the members of the party have a right to

vote. A proposed method of breaking up the corrupt primaries, is for the government to establish a primary or nominating election, to be held under the authority of law, either for a party by itself, or for all citizens together.

CHAPTER XLV.

MINOR PARTY ORGANIZATIONS.

Third Parties. — It has taken a long while to complete the organization of the two great national parties. These complex organizations have now become thoroughly established, and they are the agencies by means of which the people are enabled to choose their rulers. From the beginning there have been, outside of the two great parties, groups of voters devoted to special political interests, who have nominated candidates for office, and have been known by a party name. In recent years there have been the Greenback Party, the Union Labor Party, the Prohibition Party, the Anti-Secret Society Party, and the Woman Suffrage Party. All these have nominated candidates for the Presidency, and some of them in certain localities have had influence on elections. These minor party organizations are chiefly important for promoting the discussion of special questions. In this way they influence the party which controls the government. In the case of some of these parties, all that the promoters expect is to induce one of the regular parties to give effect to their views. Some of the minor parties expect their organization ultimately to extend to every part of

the nation and entirely displace one of the great parties. It will be seen how difficult is such a task, when we remember how extensive and thorough are the organizations of the present parties, and how long it has taken to perfect them.

The Case of the Whig Party. — The Republican party did displace the Whig party between the years 1852 and 1856. At that time party organization was by no means as strong as now. The circumstances were peculiar. There was one political issue which voters in every part of the land looked upon as more important than all others combined. This was whether slavery should be extended into the territory recently acquired from Mexico and into other unoccupied territory. The regular parties failed to join issue on this question. The new party took the field because the minds of the voters were already prepared for it. To-day it is possible to state twenty distinct political questions, and each is thought by a certain class of voters more important than all others. Political issues grow more numerous, and voters are less united in opinion as to their relative importance.

CHAPTER XLVI.

PARTY ISSUES.

Party Principles. — Throughout our entire history, the most permanent question which has distinguished parties has been the relation of the states to the federal government. The members of one political party have emphasized the importance of the states. They are inclined to interpret strictly the grant of powers to the

federal government, and thus secure to the states a wider range of powers. The other party has given a greater emphasis to the importance of the federal government. By its members the grant of powers in the Constitution has been interpreted liberally, thus enlarging the field of federal action at the expense of the states. As has been shown in former chapters, the precise boundary between the two governments is likely to be changed from time to time, and it will be convenient to have at hand two political parties, the one to guard the interests of the states, and the other to guard the interests of the federal government, that neither may suffer permanent detriment. The present Democratic party has inherited from the former Republican party founded by Jefferson, the traditions which should impel it to guard against centralization of power. The present Republican party has inherited from the Whig, and that from the older Federal party, of which Hamilton was the most conspicuous leader, the traditions which should impel it to zealous care for the national government.

Party Issues. — The principles of the two parties, as stated above, have determined their policy on many questions. Thus the party of Hamilton has favored, and the party of Jefferson has opposed, the payment by the federal government of the state debts incurred in the War of the Revolution; the chartering of federal banks for the issue of paper money; a liberal use of federal revenues in promoting internal improvements, and the maintenance of a protective tariff. At the present time (1890), the issues between the two parties are not clearly drawn. The Republican party advocates a protective tariff, while admitting the need of tariff reduction and a revision of the tariff list. The Democratic party

advocates tariff reform, while admitting the need of a measure of protection. Each party professes to favor the removal of the spoils system from politics. Each favors the control of railways by the federal government. Each party shows a tendency to favor greater restriction upon foreign immigration. Each party is divided on the questions whether the coining of silver dollars should be continued, and whether the present system of national banks should be retained.

Questions in State Politics.— Many of the questions of chief interest to the voters are such as can be settled only by the action of states. Such are the questions whether the public shall furnish school-books to pupils in the public schools; whether the state shall let out its prisoners to contractors; what measures shall be adopted to adjust difficulties between laborers and their employers; how trusts and corporations shall be prevented from injuring the public; what the government shall do to control or suppress the liquor traffic. These and many like questions, now demanding the attention of voters, are to be settled almost wholly by state action. Yet the political parties from whose nominees the people choose the officers of government are formed chiefly on national issues. There is no natural correspondence between federal party issues and state party issues. It often happens that a citizen finds himself a Republican in national politics and a Democrat in state politics. Many voters are confused by the fact that the same party machine is used in two governments exercising distinct functions. As the government comes to be better understood, citizens will be likely to form different party combinations on state and federal issues.

APPENDIX A.

ARTICLES OF CONFEDERATION.

Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE I. — The style of this Confederacy shall be, "The United States of America."

ART. II. — Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled.

ART. III. — The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ART. IV. — The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugi-

tives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and egress to and from any other State, and shall enjoy therein all the privileges of trade and commerce subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction shall be laid by any State on the property of the United States or either of them. If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State shall flee from justice and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense. Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. V. — For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the Legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year. No State shall be represented in Congress by less than two, nor by more than seven members; and

no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States for which he, or another for his benefit, receives any salary, fees, or emolument of any kind. Each State shall maintain its own delegates in any meeting of the States and while they act as members of the Committee of the States. In determining questions in the United States in Congress assembled, each State shall have one vote. Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonment during the time of their going to and from, and attendance on, Congress, except for treason, felony, or breach of the peace.

ART. VI. — No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; nor shall the United States, in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States, in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States, in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defence of such State or its trade, nor shall any body of forces be kept up by any State in time of peace, except such number only as, in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use in public stores a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled, can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against

which war has been so declared, and under such regulations as shall be established by the United States, in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

ART. VII. — When land forces are raised by any State for the common defense, all officers of or under the rank of Colonel shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ART. VIII. — All charges of war, and all other expenses that shall be incurred for the common defense, or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States, within the time agreed upon by the United States, in Congress assembled.

ART. IX. — The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases

mentioned in the sixth Article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatever; of establishing rules for deciding, in all cases, what captures on land and water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining *finally* appeals in all cases of captures; provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States, in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties

by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned; provided, that every commissioner, before he sits in judg-

ment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward." Provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said

office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States, in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each State, and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside; provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding; and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march

to the place appointed, and within the time agreed on by the United States, in Congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number can not be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled.

The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States, in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations as in their judgment require secrecy; and the yeas and nays of the delegates of each State, on any question, shall be entered on the journal when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal except such parts as are above excepted, to lay before the Legislatures of the several States.

ART. X. — The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ART. XI. — Canada, acceding to this Confederation, and joining in the measures of the United States shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ART. XII. — All bills of credit emitted, moneys bor-

rowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. XIII. — Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

AND WHEREAS it hath pleased the great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress to approve of, and to authorize us to ratify, the said Articles of Confederation and perpetual Union, know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all

questions which by the said Confederation are submitted to them; and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual. In witness whereof, we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord 1778, and in the third year of the Independence of America.

APPENDIX B.

CONSTITUTION OF THE UNITED STATES OF AMERICA.

PREAMBLE.

WE the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I. LEGISLATIVE DEPARTMENT.

Section I. Congress in General.

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section II. House of Representatives.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed. three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

Section III. Senate.

1. The Senate of the United States shall be composed of two senators from each State, chosen by the Legislature thereof for six years, and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their officers, and also a president *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they

shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in case of impeachment shall not extend farther than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law.

Section IV. Both Houses.

1. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section V. The Houses Separately.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior,

and, with the concurrence of two-thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither house during the session of Congress shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section VI. Privileges and Disabilities of Members.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Section VII. Mode of Passing Laws.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be

approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section VIII. Powers granted to Congress.

The Congress shall have power:

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States;

5. To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post-offices and post-roads;

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish felonies committed on the high seas, and offenses against the law of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the Legislature of the State, in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the

government of the United States, or in any department or office thereof.

Section IX. Powers denied to the United States.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended unless when, in case of rebellion or invasion, the public safety may require it.

3. No bill of attainder, or *ex-post-facto* law, shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Con-

gress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

Section X. Powers denied to the States.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex-post-facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delays.

Article II. Executive Department.

Section I. President and Vice-President.

1. The executive power shall be vested in a President of the United States of America. He shall hold

his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows: —

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. [The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum

for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.][1]

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

5. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President; and such officer shall act accordingly, until the disability be removed or a President shall be elected.

7. The President shall, at stated times, receive for

[1] Altered by the XIIth Amendment.

his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation: —

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Section II. Powers of the President.

1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for and which shall be established by law; but the Congress may by law

vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

Section III. Duties of the President.

He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them; and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section IV. Impeachment of the President.

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III. JUDICIAL DEPARTMENT.

Section I. United States Courts.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts

as Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Section II. Jurisdiction of the United States Courts.

1. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign states, citizens, or subjects.[1]

2. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in

[1] Altered by XIth Amendment.

the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section III. Treason.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

Article IV. The States and the Federal Government.

Section I. State Records.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section II. Privileges of Citizens, etc.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice and be

found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section III. New States and Territories.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

Section IV. Guarantee to the States.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the Legislature, or of the executive (when the Legislature cannot be convened), against domestic violence.

Article V. Power of Amendment.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first Article: and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Article VI. Public Debt, Supremacy of the Constitution, Oath of Office, Religious Test.

1. All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII. RATIFICATION OF THE CONSTITUTION.

The ratifications of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth.



AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in active service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

ARTICLE IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not granted to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

ARTICLE XI.[1]

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.[2]

1. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest

[1] Proposed by Congress March 5, 1794, and declared in force January 8, 1798.

[2] Proposed by Congress December 12, 1803, and declared in force September 25, 1804.

numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately by ballot the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Article XIII.[1]

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have

[1] Proposed by Congress February 1, 1865, and declared in force December 18, 1865.

been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.[1]

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male members of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole

[1] Proposed by Congress June 16, 1866, and declared in force July 28, 1868.

number of male citizens twenty-one years of age in such State.

3. No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

ARTICLE XV.[1]

1. The right of citizens of the United States to vote shall not be denied or abridged by the United

[1] Proposed by Congress February 26, 1869, and declared in force March 30, 1870.

States or any State on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

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